

**Plaintiff
Jackie Fisher's**

**Response in Opposition
to Defendants'**

**Motion for
Summary
Judgment**

EXHIBIT

3

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<p>5</p> <p>1 DAVID W. WATSON, 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 BY MS. MILLER: 5 Q Mr. Watson, my name's Jo Miller and I 6 represent Jackie Fisher, as you know. We just met 7 for the first time this morning. Correct? 8 A Yes, ma'am. 9 Q And I appreciate you nodding your head, as 10 well as answering out loud, because the -- 11 A I'll try to be -- 12 Q -- court reporter is here -- 13 A Sure. 14 Q -- and she's going to need you to do that. 15 A Sure. 16 Q But if you don't and I remind you -- 17 A Please. 18 Q -- it's so that we can have a complete 19 record. 20 A Of course. 21 Q Have you had your deposition taken before? 22 A No. 23 Q And I'm sure you had a chance to review 24 some of the ground rules with Mr. Lively, but if you 25 don't understand my question, ask me to repeat it or</p>	<p>7</p> <p>1 Q All right. I guess you better state your 2 full name so we have it for the record. 3 A My name is David W. Watson. 4 Q And we won't have the court reporter put 5 this down in the record, but I would like to have a 6 reference of your complete home address or residence 7 where you can be reached. 8 A (Redacted) 9 Q And your home, land-based telephone 10 number? 11 A (Redacted) 12 Q Okay. And what's your Social Security 13 number? 14 A (Redacted) 15 Q And your Texas driver's license? 16 A Well, let me think about that one. 17 (Redacted) 18 Q Need to check it? 19 A Don't have it. 20 Q Okay. 21 A I think it's in the truck. 22 Q What's the highest level of education 23 you've achieved, Mr. Watson? 24 A I have two bachelor's degrees. 25 Q And take them one at a -- one at a time.</p>
<p>6</p> <p>1 rephrase it. I'm looking for correct answers, 2 correct meaning your thoughts and your answers to my 3 questions. So if I'm getting an answer that's 4 different to the question that I ask, that's not 5 what I'm here for -- 6 A I understand. 7 Q -- either. So slow me down -- I can talk 8 pretty fast -- and ask me to repeat it. 9 A I will do. 10 Q Is there any reason that you can't give 11 accurate and true answers to the deposition 12 questions today? 13 A No. I will give you my best answer. 14 Q Okay. I appreciate that. If you need a 15 break, let me know. 16 A Okay. 17 Q And we'll take a break. And you 18 understand that this deposition is under oath, so it 19 can be used in trial, can be used as regular 20 testimony just as if you were there before the Judge 21 and the jury. 22 A I understand. 23 Q Okay. Do you have any questions before we 24 begin? 25 A I don't think so.</p>	<p>8</p> <p>1 A bachelor of? 2 A I have a Bachelor's of Science in law 3 enforcement and police science and I have a 4 bachelor's degree in nursing. 5 Q Okay. Let's take the first one, the law 6 enforcement and police science. Where did you 7 receive that? In what year? 8 A Sam Houston State University here in 9 Huntsville in 1982, I believe it was. 10 Q Okay. And what -- did you have any 11 specialty in that degree or is it just a general 12 degree in law enforcement and police science? 13 A It's just a general degree in law 14 enforcement. 15 Q And a Bachelor of Science in nursing? 16 A Yes, ma'am. 17 Q And where was that? 18 A The University of Texas at Tyler. 19 Q And what year did you achieve that? 20 A 1994. 21 Q And that's also a Bachelor of Science? 22 A Yes, ma'am. 23 Q Any specific area of education or 24 specialization in your nursing degree? 25 A My early years were spent in critical</p>

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<p style="text-align: right;">9</p> <p>1 care, mostly in the emergency department.</p> <p>2 Q And that's in your education or in your</p> <p>3 experience?</p> <p>4 A Oh, that's experience.</p> <p>5 Q Okay. Any specialty in your nursing</p> <p>6 degree?</p> <p>7 A No, ma'am.</p> <p>8 Q And prior to your studies at Sam Houston</p> <p>9 and University of Texas at Tyler, did you attend any</p> <p>10 other post-high school?</p> <p>11 A I had an associate's degree, also, in law</p> <p>12 enforcement from Grayson County College prior to</p> <p>13 coming to Sam Houston State.</p> <p>14 Q Grayson?</p> <p>15 A Yes, ma'am. G-R-A-Y-S-O-N.</p> <p>16 Q And where is that?</p> <p>17 A It's North Central Texas. It's about, I'd</p> <p>18 say, 60 miles or so north of Dallas.</p> <p>19 Q Okay. And you're a Texan?</p> <p>20 A Yes, ma'am.</p> <p>21 Q Okay.</p> <p>22 A Can't tell, huh?</p> <p>23 Q I see the burnt orange shirt, so --</p> <p>24 A Strictly coincidental, ma'am. It just</p> <p>25 happened to be clean and toward the front of the</p>	<p style="text-align: right;">11</p> <p>1 A Yes, ma'am.</p> <p>2 Q For nursing. Okay. And since -- did you</p> <p>3 work while you were working -- while you were</p> <p>4 pursuing your nursing degree?</p> <p>5 A Yes.</p> <p>6 Q And where did you work?</p> <p>7 A Oh, let me think about that. I worked at</p> <p>8 Longview Medical Center -- I'm sorry. Wait a</p> <p>9 minute. It's Good Shepherd, I guess. I think it's</p> <p>10 Good Shepherd Medical Center in Longview, and I also</p> <p>11 spent some time working as a nurse tech at the East</p> <p>12 Texas Medical Center in Tyler.</p> <p>13 Q And then after you graduated in 1994,</p> <p>14 where did you work?</p> <p>15 A I worked at the trauma unit in the East</p> <p>16 Texas Medical Center, ER, if you will.</p> <p>17 Q And what position was that?</p> <p>18 A Staff nurse.</p> <p>19 Q Did you have anybody that reported to you</p> <p>20 at that point?</p> <p>21 A No. I don't think so.</p> <p>22 Q Okay. And that was East Texas?</p> <p>23 A Yes, ma'am.</p> <p>24 Q And how long were you at the East Texas</p> <p>25 trauma center as a staff nurse?</p>
<p style="text-align: right;">10</p> <p>1 closet.</p> <p>2 (Discussion off the record</p> <p>3 from 10:48 to 10:49)</p> <p>4 Q (BY MS. MILLER) And prior to your</p> <p>5 associate's degree at Grayson County College, where</p> <p>6 did you go to high school?</p> <p>7 A Denison High School in Denison, Texas,</p> <p>8 which is also located in Grayson County.</p> <p>9 Q Okay. And let's talk about your work</p> <p>10 history as it relates to nursing. You've had some</p> <p>11 work history, and just from a little casual</p> <p>12 conversation before and I've seen your resume and I</p> <p>13 do know just from speaking with you that you ran a</p> <p>14 K-9 unit in police and law enforcement. So I guess</p> <p>15 briefly go through your law enforcement background</p> <p>16 for me and then we'll go more in-depth in your</p> <p>17 nursing background.</p> <p>18 A Okay. Started out here in Huntsville at</p> <p>19 the University Police Department in 1981, I believe</p> <p>20 it was, and then in 1985 I moved to the Huntsville</p> <p>21 Police Department. While there, I worked as a</p> <p>22 uniformed patrol officer, I worked as a detective, I</p> <p>23 worked as a K-9 officer, and I ended my career as a</p> <p>24 K-9 officer in 1992 in the police department.</p> <p>25 Q And that's when you went back to school?</p>	<p style="text-align: right;">12</p> <p>1 A I don't recall precisely. Due to a family</p> <p>2 situation, we moved in, I think was '95, back to</p> <p>3 Caldwell, Texas. It was in that time period. I</p> <p>4 believe it was in about --</p> <p>5 Q And because you moved, that's the reason</p> <p>6 you left the East Texas?</p> <p>7 A Yes, ma'am.</p> <p>8 Q What did you do in Caldwell?</p> <p>9 A Well, originally I began working at The</p> <p>10 Med -- they call it The Med now, I think The Med</p> <p>11 Center in College Station. I worked in the ER there</p> <p>12 for a while. And then -- oh, I don't know how long</p> <p>13 I stayed there. And then I took a position as a</p> <p>14 field nurse in the home health department at the</p> <p>15 small hospital in Caldwell, field super -- RN field</p> <p>16 supervisor, I think, is what it was referred to as.</p> <p>17 Q RN supervisor?</p> <p>18 A Yes, ma'am.</p> <p>19 Q Okay. So in The Med Center, when you were</p> <p>20 in the ER, did you have any direct reports at that</p> <p>21 point?</p> <p>22 A I don't think so.</p> <p>23 Q And as a field nurse in the home health,</p> <p>24 did you have direct reports?</p> <p>25 A Yes. I had at least one, maybe two LVNs</p>

<p style="text-align: right;">13</p> <p>1 and some nurses' aides. 2 Q And do you recall approximately how many 3 nurses' aides? 4 A Two, I think. It was very small. 5 Q And how long were you at the -- as a 6 field -- did you work as a field nurse? 7 A Just a few months. 8 Q And when did you leave that? 9 A Well, I left the position after a few 10 months but then the director of the unit resigned 11 and I was asked to become the director of that 12 agency and I took that on, like I say, within a few 13 months and did that for approximately a year. 14 Q And that was a director of the home health 15 agency for the hospital? 16 A Yes, ma'am. 17 Q And as the director, how many people 18 reported to you? 19 A Two or three R -- it varied, but probably 20 no more than three RNs, two to three LVNs, and two 21 to three nurses' aides and a secretary, I believe. 22 Q And you did that for about a year? 23 A Yes, ma'am. Approximately. 24 Q And when did you leave that position? 25 A I believe it was in 1996.</p>	<p style="text-align: right;">15</p> <p>1 Q Okay. And how long were you there at 2 the -- as the field officer for -- in the Sherman 3 facility? 4 A Less than six months. 5 Q Okay. What time period are we up to now? 6 A Late -- late '96, maybe early '97. 7 Q Okay. And then where did you go? 8 A Huntsville Memorial Hospital, ER here in 9 Huntsville, staff nurse. 10 Q How long were you in that position? 11 A Approximately one year. 12 Q And as a staff nurse, you wouldn't have 13 had any direct reports. Is that correct? 14 A No. No direct reports unless you were 15 occasionally a charge nurse on that shift. I think 16 I did that a whole total of once. 17 Q And after the Huntsville hospital? 18 A Texas Department of Criminal Justice 19 Medical Health Services? 20 MS. FISHER: Health Services. 21 THE WITNESS: Health Services. Thank 22 you. 23 A Health Services Division as a -- gosh, I 24 can't remember. QA nurse or contract monitor. I 25 think our titles changed in there sometime.</p>
<p style="text-align: right;">14</p> <p>1 Q And where did you go? 2 A My father was diagnosed with terminal 3 cancer, so I moved back to Denison to take care of 4 him and help take care of my elderly mother till he 5 passed? 6 Q I'm sorry to hear that. How long was that 7 that you were -- you were essentially unemployed in 8 the work force but -- although you were working 9 full-time, I'm sure. 10 A Yeah. Yeah. It was, I want to say, maybe 11 a month or two and then I took another job as a 12 field office supervisor, I guess you would call it, 13 for another home health agency, and I do not 14 remember the name of that agency. 15 Q And that was in Denison? 16 A I was living in Denison. The agency was 17 located in Sherman, Texas. 18 Q And how many people reported to you at 19 that point? 20 A Gosh, that's reaching back. This is an 21 estimation. 22 Q Sure. That's fine. 23 A Probably two or three RNs and two or three 24 LVNs and maybe a half a dozen aides, secretary, and 25 an assistant director of the office.</p>	<p style="text-align: right;">16</p> <p>1 MS. MILLER: You have to stop this. 2 THE WITNESS: Helping me? 3 MS. MILLER: Yes. Jackie is. 4 THE WITNESS: I'm sorry. I 5 appreciate it, though, for what it's worth. You may 6 have not noticed, but I'm fat, old, and gray. My 7 memory's not what it used to be. 8 MS. MILLER: You're not special at 9 this table. 10 MR. LIVELY: That's what we talked 11 about yesterday. Right? 12 Q (BY MS. MILLER) Okay. So you're 13 either -- let's go back to the TDC position and you 14 think what was -- as best as you can recall, your 15 job title was what? 16 A I'm sorry. I just -- I can't remember. I 17 know we did something with quality assurance program 18 and I know we were -- it was a combination of 19 things. We were that and contract monitors but I 20 don't -- I'm sorry. I don't remember the job title. 21 Q And contract monitors? 22 A Yes, ma'am. 23 Q And what kind of contracts would you 24 monitor? 25 A The contract that the Texas Prison System</p>

<p style="text-align: right;">17</p> <p>1 had with UTMB. 2 Q And in that relationship, who did you work 3 with at UTMB? 4 A Cavan Brophy, Ms. Watkin -- Helen Watkins 5 was my supervisor. Dorothy Gilbert, Marjorie 6 Archie, Susan Townsend. That's all I can remember. 7 Q Okay. And did you have any direct reports 8 in that position? 9 A I did not. 10 Q How long were you in that position? 11 A About three years, I guess, or four. 12 Q And from that position, where did you go? 13 A I was promoted to Ms. Watkins' position 14 when she retired and I don't remember the title of 15 that one, either. I'm sorry. 16 Q And that was still at TDCJ? 17 A Yes, ma'am. 18 Q And do you remember when that was? 19 A I do not. 20 Q And what did the position entail when you 21 took over Ms. Watkins' position? 22 A Supervising the other contract monitor 23 nurses. I think there was maybe five or six. 24 Q And how long did you hold that position? 25 A Till I came to UTMB, which I think was</p>	<p style="text-align: right;">19</p> <p>1 Q (BY MS. MILLER) Elaine? 2 A -- and we liked that. 3 Q Would you just pronounce it again for me 4 and I'll just do the best I can. 5 A Milewesci. 6 Q Milewesci. 7 MS. FISHER: M-I-L-E-W-E-S-C-I. 8 A That's impressive. Closer than I could 9 have. 10 Q (BY MS. MILLER) Okay. That's fine. 11 Close enough. And how long were you in that 12 position with UTMB? 13 A Year, maybe 18 months. 14 Q And essentially what did you do in that 15 position? 16 A I supervised 24 facilities, the nursing 17 aspects of 24 facilities throughout that region, 18 nursing process. 19 Q And compared to your job that you had at 20 TDC, that was a significant amount of 21 responsibility, increase in responsibility; wasn't 22 it? 23 A Yes, ma'am. 24 Q Do you recall what you were making in 25 salary when you worked for TDCJ?</p>
<p style="text-align: right;">18</p> <p>1 October of 2001. 2 Q And do you recall what position you 3 started in with UTMB? 4 A Southern regional director of nurses. 5 Q And as southern regional director of 6 nurses, what areas did you have? Was it a 7 geographic division, I'm assuming? 8 A Yes. It about a 1500-square-mile area, 9 triangle, with the tip being -- the lower tip being 10 in Galveston, and then one of the angles would be in 11 Sugar Land and the other one would be in Beaumont. 12 So it extended from -- the west side was Sugar Land 13 area all the way to Beaumont, through Houston, and I 14 don't think I actually -- I had some south or in the 15 area -- in the general area of Galveston down near 16 the coast. 17 Q Okay. And to whom did you report in that 18 position? 19 A Elaine Milewesci. 20 Q Could you spell that for me? 21 A No. 22 Q You couldn't. Okay. 23 MS. MILLER: Can you? 24 A She wanted us to call her -- she wanted us 25 to call her Elaine --</p>	<p style="text-align: right;">20</p> <p>1 A 42,000 to 46, somewhere in that 2 neighborhood. 3 Q And when you started at UTMB, what level 4 did you start at, do you recall? 5 A Just under 80,000. I believe it was 78- 6 or 79,000. 7 Q And in these 24 facilities that you 8 supervised all the nursing processes -- is that 9 correct -- as well as the nursing staff? 10 A Yes. 11 Q Does that encompass it? 12 A I think that's a fair statement. 13 Q All right. And I'm not a nurse and I'm 14 not a medical professional, so if I misstate 15 something because of ignorance, you will help me out 16 on that; won't you? 17 A I'll help you if you'll help me. 18 Q Okay. I'm not sure I can. And so you 19 worked for Elaine -- 20 A Yes. 21 Q -- for about a year and then what did you 22 do? 23 A UTMB underwent an organization -- excuse 24 me, a reorganization, and they decided that we had 25 four regions, north, south, east, and west, and they</p>

<p style="text-align: right;">21</p> <p>1 decided that that was too much for one person to 2 supervise and so they created, I want to say, like 3 11, maybe, smaller little subdivisions, districts or 4 clusters. I forget what we -- I think it was 5 clusters, which I strenuously objected to that name, 6 but didn't matter. And so I had to reinterview for 7 the job, in fact, right here in this very building 8 in the room right over there, and I was hired as a 9 senior cluster nurse manager. We were, in effect, 10 RIF'd. 11 Q Okay. So you were -- and everybody had to 12 reapply. Well -- 13 A Yes. 14 Q -- there were only four of you, 15 essentially. Right? 16 A Well, there were four of us but other 17 people that were in positions also applied for those 18 jobs, so you weren't competing just with those four 19 other people, plus they had to have like 11 or 20 however many to fill. So four -- they had -- 21 assuming you hired those four back, Estelle had 22 seven or so, eight. 23 Q And as a senior cluster nurse manager, 24 what cluster were you put in charge of or were you 25 hired for?</p>	<p style="text-align: right;">23</p> <p>1 Q Okay. And essentially by the -- at the 2 time you left UTMB, you were also Estelle -- you 3 were -- remained a senior cluster nurse manager. Is 4 that correct? 5 A (Moving head up and down). 6 Q So you had that title. When did you 7 leave? 8 A I believe it was October of '06. 9 Q So you essentially worked for UTMB about 10 five years? 11 A About five years. 12 Q Okay. How did you get to know Jackie 13 Fisher? 14 A Ms. Fisher applied for a cluster nurse 15 manager position that was open and I interviewed 16 her. 17 Q Ms. Fisher applied for a cluster nurse 18 manager position, and do you recall for what 19 facility? 20 A Ferguson, Goree, and the Huntsville 21 Wallace Unit, I believe. 22 Q Are there more than one -- is there more 23 than one Huntsville unit? 24 A No. It's the one right across the street. 25 Q It's just the Wallace Unit, is the only</p>
<p style="text-align: right;">22</p> <p>1 A The Huntsville cluster here. 2 Q The Huntsville cluster. And you remained 3 at the Huntsville cluster until you left the agency. 4 Correct? 5 A That's correct. 6 Q So where you had 24 facilities the prior 7 year, after you -- after the reorganization and you 8 were the cluster nurse manager for the Huntsville 9 area, how many facilities did you supervise? 10 A It varied between 11, and I think it was 11 14 because they redefined boundaries of some of the 12 clusters and we picked up units. There was also a 13 private contract with the Walker County Jail that I 14 was given. And then the next year wasn't renewed, 15 so it fluctuated between 11 and 14. 16 Q And as the senior cluster nurse manager, 17 to whom did you report? 18 A I think it started out with Elaine but -- 19 yes, I know it did, because she interviewed me for 20 the job, and then somewhere in the process, she left 21 and Mary Gotcher became the director of nurses. So 22 I reported to Mary Gotcher after that. 23 Q And did you know Mary from before? 24 A Yes. In fact, I was on her interview 25 board when they hired her.</p>	<p style="text-align: right;">24</p> <p>1 one in Huntsville. 2 A And it goes by both names. 3 Q Okay. 4 A I don't even know, honestly, what the 5 official name is. I think it's the Huntsville Unit 6 but I've heard it called the Wallace Unit as well. 7 Q Okay. And did she get the job? 8 A She did. 9 Q Do you recall when that was? 10 A No. I'm sorry. 11 Q Do you recall other people that you 12 interviewed that did not get the job? 13 A I do not. 14 Q So you began working with Ms. Fisher in 15 the capacity of the cluster nurse manager position? 16 A Yes. 17 Q Was it a cluster nurse manager or was she 18 hired as an assistant first? 19 A She may have been an assistant at the 20 time, but when I came across and interviewed her, it 21 was for the cluster nurse manager position. 22 Q Okay. So you really didn't have 23 contact -- if she had been an assistant before, 24 which I'm going to represent to you that she was, 25 you would not have had contact with her.</p>

<p style="text-align: right;">25</p> <p>1 A We may have met informally when I first 2 came here but I don't have any recollection of 3 anything specific. 4 Q And in your position, you wouldn't have 5 the opportunity or wouldn't have a necessity, 6 really, to get to know all the assistant cluster 7 nurse managers. 8 A Well, ultimately, yeah, I would want to 9 know all the cluster nurses and cluster nurse 10 managers. I would speculate if she stayed in that 11 position, I would have gotten to know her, anyway. 12 Q Okay. And about -- do you recall how many 13 assistant cluster nurse managers you had in -- over 14 your supervisory role? 15 A Maybe nine. There might have been a few 16 more. I'm not sure. 17 Q And of those nine, was she the first one 18 that you hired as a cluster nurse manager or had you 19 hired cluster nurse managers prior to hiring 20 Ms. Fisher? 21 A She was the first, I believe. 22 Q So essentially the -- at the time you 23 hired her, you had inherited the rest of the staff. 24 A Correct. 25 Q Okay. And how about the -- were you</p>	<p style="text-align: right;">27</p> <p>1 Q (BY MS. MILLER) No. Okay. So 2 intelligent, dynamic, personable, hard-working and 3 knew the system. And you said that was your early 4 impression of Ms. Fisher. And after working -- and 5 when you say "early impression," when was that 6 impression formed? Over what period of time? 7 A Well, it started when I interviewed her 8 and it continued for, I would say, the first six to 9 nine months or so. 10 Q And apparently there was a time when your 11 impression started to change. 12 A Gradually. 13 Q Okay. And did your impression of her 14 intelligence change? 15 A No. She's very intelligent. 16 Q And your impression of her dynamic? 17 A No. 18 Q Did the dynamic change? 19 A I think she's still pretty dynamic. 20 Q How about your impression of her being 21 personable? 22 A A little. It changed a little. 23 Q And her -- your impression of her being 24 hard-working? 25 A She's hard-working. Never changed.</p>
<p style="text-align: right;">26</p> <p>1 responsible for hiring the assistant nurse managers? 2 A No. 3 Q Okay. And that would have been the 4 responsibility of the nurse managers. Correct? 5 A Yes. I like them to review their 6 selection with me. If I had any input or 7 suggestion, I would like to talk to them about it, 8 but it was ultimately their responsibility. 9 Q And after working with Ms. Fisher for a 10 while as the assistant cluster nurse manager, did 11 you form an opinion as to her performance abilities 12 and her professionalism? 13 A Yes. My early impressions was that she -- 14 well, in fact, stemming from the interview, that she 15 was intelligent, dynamic, personable, knew the 16 system, hard-working. She was very impressive. 17 Q Okay. Intelligent, dynamic, personable, 18 hard-working, knew the system. Anything else? 19 A No. 20 Q Professional. Did you say professional? 21 A I may have. 22 MS. MILLER: Can you see if he did? 23 I'm not trying to give you adjectives. 24 THE WITNESS: No, that's fine. 25 THE REPORTER: No.</p>	<p style="text-align: right;">28</p> <p>1 Q No -- that's not a question. 2 A Not in my mind. 3 Q And how about knowing the system? Did 4 that -- did -- 5 A No. Didn't change. 6 Q That didn't change. Okay. Now, there was 7 a time in October of 2005, I believe, that you had 8 the opportunity to discuss a transfer with another 9 nurse, with a nurse that worked -- I'm not sure what 10 she was working. Strike that. Ms. Patricia 11 Freeman. Do you recall that discussion? 12 A I'm sorry. What was the time period? 13 Q October of 2005. 14 A Yes, I recall that. 15 Q All right. Tell me, in your own words, 16 about that situation. What happened and why is that 17 a memorable situation to you? 18 A Well, I had moved several managers around. 19 Ms. Fisher is one of those managers. And it became 20 fairly apparent pretty quick that the dynamic or the 21 immediate response to some of the staff was to run 22 and scurry and follow their managers, which, in my 23 mind, would somewhat defeat the purpose of the 24 transfer in the first place. And so when that 25 happened, I essentially said that if anybody were</p>

<p style="text-align: right;">29</p> <p>1 going to transfer inside the -- inside my cluster 2 that it would have to be approved by me first and 3 they would have to give me a rationale for transfer. 4 Q Okay. And that was a general stated 5 policy, maybe not a written policy, but that was 6 just something -- 7 A (Moving head up and down). 8 Q It wasn't developed specifically for this 9 situation. Is that correct? 10 A Actually, it was developed, I believe, 11 specifically for this situation. 12 Q Okay. All right. 13 A Formulated, if you will. 14 Q Okay. And so why did it become an issue? 15 A I was concerned -- well, let me step back 16 for a moment. When I came to the cluster, as you 17 said, I inherited the staffing. And when 18 Ms. Freeman's -- when Ms. Freeman was brought to my 19 attention, I was told thirdhand -- I didn't know 20 what her personal experiences were -- that she was 21 problematic, she was rude, not an -- not an ideal 22 employee. And so -- 23 Q And let me just interrupt you for a second 24 and let you continue. Who told you that when you 25 were told thirdhand?</p>	<p style="text-align: right;">31</p> <p>1 Q Okay. And is that the formal interview 2 process? 3 A It could have been in person or it could 4 have been on the phone. I think I dealt with one 5 telephonically but, yes. 6 Q Okay. And was there another employee who 7 also desired to transfer too? I believe it was 8 Ms. Ford? 9 A No. 10 Q Do you recall that situation in January? 11 Oh. That was a rehire. Strike that. 12 It became a problem with 13 Ms. Freeman's denial; didn't it? 14 A I think it's safe to say Ms. Fisher had 15 concerns about it, yes. 16 Q Okay. And those concerns were voiced to 17 you, I believe, in a meeting on January 4th of 2006. 18 Do you recall that meeting? 19 A No. We had several discussions about 20 Ms. Freeman. I don't recall any specific. 21 Q Do you remember the discussion of rehiring 22 Ms. Ford? 23 A Oh, yes. 24 Q Okay. 25 A I remember that one.</p>
<p style="text-align: right;">30</p> <p>1 A I don't -- well, Ms. -- I do remember, 2 too. There was probably more, but Ms. Box, Denise 3 Box, told me that, as well as did Mary Adams. 4 Q Okay. 5 A And so I was a little concerned that if 6 Ms. Freeman transferred under Ms. Fisher's command, 7 if you will, command structure, that it could cause 8 Ms. Fisher problems, and I didn't want that to 9 happen. Furthermore, when I talked to Ms. Freeman, 10 she was unable to give me a reason or a rationale 11 for the transfer other than just because. The 12 people I had spoken with previously -- I only 13 remember one that sticks in my mind, and as I recall 14 the situation, she had -- I think she had moved her 15 residence and now she was closer to one unit than 16 she was to another, so she wouldn't have a long way 17 to drive, so it was an economic impact, and I said 18 that's a reasonable explanation. I granted it. But 19 Ms. Freeman couldn't give me an explanation at all. 20 Q And so was Ms. Freeman permitted the 21 opportunity to interview for that position? 22 A To transfer? 23 Q Um-hmm. 24 A Yes. She met with me personally in my 25 office.</p>	<p style="text-align: right;">32</p> <p>1 Q You remember that discussion. 2 A I do. 3 Q Okay. If I represent to you that the 4 information shows that was January 4th of 2006 -- 5 A I wouldn't object to it. 6 Q You wouldn't object to it. Okay. Tell me 7 what happened in that meeting. 8 MR. LIVELY: Which meeting are you 9 talking about? 10 MS. MILLER: January 4th, 2006. That 11 was the discussion of rehiring -- 12 MR. LIVELY: Okay. 13 MS. MILLER: -- Ms. Ford for Lavina 14 Wright. 15 MR. LIVELY: We're off Ms. Freeman? 16 MS. MILLER: Well, kind of. 17 MR. LIVELY: That's -- I'm just -- I 18 was confused. 19 MS. MILLER: Okay. 20 MR. LIVELY: Go ahead. I'm sorry. 21 THE WITNESS: Could you repeat? I'm 22 lost. 23 Q (BY MS. MILLER) All right. I think there 24 was a question pending but I'll formulate another 25 one --</p>

<p style="text-align: right;">33</p> <p>1 A Okay.</p> <p>2 Q -- so you have one. You indicated, oh,</p> <p>3 yes, you recalled that instance.</p> <p>4 A Yes. I do.</p> <p>5 Q Can you tell me what happened during that</p> <p>6 meeting? We think the date is January 4th and we'll</p> <p>7 go with that for the time being.</p> <p>8 A In order to explain, may I step back in</p> <p>9 time just a little?</p> <p>10 Q Surely.</p> <p>11 A Ms. Ford had left UTMB and she had done</p> <p>12 whatever she did and she wanted to come back and</p> <p>13 come back to work. Ms. Wright approached me about</p> <p>14 that and explained that -- because Ms. Ford was</p> <p>15 problematic, quite frankly. She was rude. She was</p> <p>16 brusk. She was, in my opinion, a know-it-all, and</p> <p>17 somewhat abrasive. So Ms. Wright explained that,</p> <p>18 "Oh, she's changed. You know, her lifestyle, things</p> <p>19 have changed. She's a better person," blah blah</p> <p>20 blah. Okay. Fine.</p> <p>21 So we were in the -- in the meeting.</p> <p>22 It was the -- it was the nurse managers for the</p> <p>23 cluster. And I don't remember exactly how the topic</p> <p>24 came up, but it came up, and I had originally been</p> <p>25 persuaded to allow Ms. Wright to rehire Ms. Ford.</p>	<p style="text-align: right;">35</p> <p>1 racial discrimination -- Ms. Fisher is African</p> <p>2 American also.</p> <p>3 A She is.</p> <p>4 Q It was during that meeting, I believe,</p> <p>5 that Ms. Fisher made some allegations to you and</p> <p>6 suggested that -- or stated that she thought it was</p> <p>7 racially discriminatory. Do you recall that</p> <p>8 conversation?</p> <p>9 A I don't recall any conversation about</p> <p>10 racial discrimination. She was against Ms. Ford's</p> <p>11 rehiring and Ms. Fisher was right and, I mean,</p> <p>12 there's just no two bones about it. I had</p> <p>13 forgotten. She reminded me. She was right. I</p> <p>14 agree with her.</p> <p>15 Q And was it during that meeting that you</p> <p>16 made that decision to rethink your decision to hire</p> <p>17 Ms. Ford?</p> <p>18 A Well, I began rethinking the process. I</p> <p>19 don't know if I made the decision immediately on the</p> <p>20 spot or shortly thereafter, but I do remember</p> <p>21 telling Ms. Wright that -- that Jackie was right and</p> <p>22 that I wasn't going to change my mind. She made a</p> <p>23 good call, she reminded me, and I appreciated it.</p> <p>24 Q And when did -- did you, at some point,</p> <p>25 learn that Ms. Fisher made allegations that that was</p>
<p style="text-align: right;">34</p> <p>1 And Ms. Fisher pointed out quite correctly some</p> <p>2 things I had forgotten, i.e., Ms. Ford was, in fact,</p> <p>3 abrasive and she was problematic, and once she</p> <p>4 reminded me of that, I realized she was right and I</p> <p>5 stopped the hiring process.</p> <p>6 Q Okay. And did Ms. Ford have an</p> <p>7 opportunity to interview again for -- during the</p> <p>8 rehire process?</p> <p>9 A I'm not sure.</p> <p>10 Q Okay. And when you said you'd been</p> <p>11 persuaded by someone, who was it that persuaded you</p> <p>12 that Ms. Ford had changed?</p> <p>13 A Well, Ms. Wright was attempting to. She</p> <p>14 had a personal relationship, as I understand it,</p> <p>15 with Ms. Ford, and so she had more knowledge about</p> <p>16 her, you know, personal situation. I had no</p> <p>17 knowledge of it.</p> <p>18 Q Okay. And just for the record, Ms. Wright</p> <p>19 is Caucasian. Correct?</p> <p>20 A She is, yes.</p> <p>21 Q And Ms. Ford is Caucasian?</p> <p>22 A She is.</p> <p>23 Q Ms. Freeman is African American?</p> <p>24 A She is.</p> <p>25 Q And for the record -- obviously, it's</p>	<p style="text-align: right;">36</p> <p>1 racially discriminatory?</p> <p>2 A I'm not sure how to answer that but I'll</p> <p>3 try to explain the --</p> <p>4 Q Okay. It's not a trick question. I'm not</p> <p>5 trying to trick you but --</p> <p>6 A I know, but I just want a complete answer.</p> <p>7 We had talked at length about it and so one day I</p> <p>8 went to her office and I said to her -- I'm</p> <p>9 paraphrasing -- "Ms. Fisher, do you think that I</p> <p>10 have administered this cluster in any way that is</p> <p>11 racially motivated, discriminatory?" or whatever it</p> <p>12 was. And she said, "No, I don't. But I do have</p> <p>13 concerns that the decision you made about</p> <p>14 Ms. Freeman could appear that way." And I said</p> <p>15 "Well, please explain." And she said, "Well, you</p> <p>16 know, you really didn't hear her side of the story,"</p> <p>17 and I'm not sure what else she said. And I said,</p> <p>18 "Well, I'll think about that and I appreciate your</p> <p>19 feedback." And I asked her for a personal favor and</p> <p>20 she said, "What is it?" And I said, "If, at any</p> <p>21 point in time, from here forward, if you see me</p> <p>22 making any decisions or whatever that you feel could</p> <p>23 also appear this way, as a personal favor to me,</p> <p>24 would you please come and notify me of that?" She</p> <p>25 said she would.</p>

<p style="text-align: right;">37</p> <p>1 Q And did that conversation take place</p> <p>2 before you had made -- rethought your decision, made</p> <p>3 the decision not to hire Ms. Ford --</p> <p>4 A I'm pretty sure --</p> <p>5 Q -- or it was during that process?</p> <p>6 A No. I'm pretty sure at this time, I had</p> <p>7 already decided Ms. Ford wasn't coming back.</p> <p>8 Q And had you announced that decision?</p> <p>9 A I --</p> <p>10 Q Or was this a discussion with Ms. Fisher</p> <p>11 that --</p> <p>12 A This was -- well, this -- I think I had</p> <p>13 but I won't -- I'm not certain. If I had the</p> <p>14 conversation, it was probably held with Ms. Wright</p> <p>15 because she was the one seeking the rehire, and I</p> <p>16 honestly don't remember if we discussed it in detail</p> <p>17 or not. I may have. I don't remember.</p> <p>18 Q At that time, it was early 2006 and I</p> <p>19 think -- I'm not sure how long Ms. Fisher had been</p> <p>20 in her position as nurse manager of Ferguson,</p> <p>21 Huntsville, and Goree, I believe.</p> <p>22 A Well, at this -- in 2000 -- I think it was</p> <p>23 August of 2005 when she came to the regional medical</p> <p>24 facility. I won't swear to it.</p> <p>25 Q August of 2005?</p>	<p style="text-align: right;">39</p> <p>1 that that had happened. So she at least was the</p> <p>2 nurse manager at that point.</p> <p>3 A Oh, yes.</p> <p>4 Q Correct? And who would have investigated</p> <p>5 that at the facility level?</p> <p>6 A I'm not sure. Normally it would be</p> <p>7 probably the manager, but in this case, since she</p> <p>8 was directly involved with patients' care, I don't</p> <p>9 remember if somebody else may have investigated it.</p> <p>10 Q But there would always be a facility level</p> <p>11 investigation?</p> <p>12 A Well, a review.</p> <p>13 Q A review?</p> <p>14 A Yes, ma'am.</p> <p>15 Q And would that be a written report?</p> <p>16 A I believe so.</p> <p>17 Q At least it should be?</p> <p>18 A I -- we're reaching way back in time. I</p> <p>19 believe it would be. I just don't -- I can't</p> <p>20 envision that they would make some sort of verbal</p> <p>21 report. I would -- I just feel very strongly it</p> <p>22 would be in some sort of written format.</p> <p>23 Q And to whom that -- would that report be</p> <p>24 made?</p> <p>25 A Probably to me.</p>
<p style="text-align: right;">38</p> <p>1 A I think so.</p> <p>2 Q Okay. Well, there was something</p> <p>3 significant in August of 2005 and that was the</p> <p>4 suicide of an inmate that was -- that hung himself.</p> <p>5 A Yes.</p> <p>6 Q And that was under the time frame that</p> <p>7 Ms. Freeman -- Ms. Fisher was the nurse manager of</p> <p>8 that facility. Is that correct?</p> <p>9 A That is correct.</p> <p>10 Q And were you involved in that</p> <p>11 investigation at all?</p> <p>12 A Yes.</p> <p>13 Q And how were you involved?</p> <p>14 A Well, the -- if I'm remembering correctly,</p> <p>15 in the case of a death, the death is reviewed at the</p> <p>16 facility level, it's reviewed at the -- I guess I'll</p> <p>17 say district or cluster level, again, my level, and</p> <p>18 then there's at least one more review of that case</p> <p>19 by the TDCJ mortality review committee. So I went</p> <p>20 and investigated it from the -- for the district</p> <p>21 level.</p> <p>22 Q For the cluster level?</p> <p>23 A Yes, ma'am.</p> <p>24 Q Okay. And, again, I'm going to represent</p> <p>25 to you I think was August of 2005 -- '4 -- sorry --</p>	<p style="text-align: right;">40</p> <p>1 Q Okay.</p> <p>2 A And to my team, my team. So it would be</p> <p>3 me, Ms. Fox, the dentist, the physician, psych</p> <p>4 person, I believe, is the people.</p> <p>5 Q And Ms. Fox's position at that point was</p> <p>6 what?</p> <p>7 A She was the senior cluster practice</p> <p>8 manager. It's a mouthful; isn't it?</p> <p>9 Q It is. I'm just thinking, who thought</p> <p>10 these up?</p> <p>11 A Oh, I don't know but they should be shot.</p> <p>12 Q Okay. So there was some sort of</p> <p>13 investigation done at the facility level and this is</p> <p>14 concerning the suicide of the inmate who hung</p> <p>15 himself in some -- in 2004.</p> <p>16 A Yes. Honestly, I don't have a good</p> <p>17 recollection of the results of the facility level</p> <p>18 investigation.</p> <p>19 Q Okay. How about the cluster level, then?</p> <p>20 That was the investigation level you indicated you</p> <p>21 would be in charge of.</p> <p>22 A Um-hmm. Yeah.</p> <p>23 Q And what did you do to investigate that?</p> <p>24 A I reviewed the records primarily. I know</p> <p>25 I spoke with Ms. Fisher and I think that was</p>

<p style="text-align: right;">41</p> <p>1 probably about it.</p> <p>2 Q And what conclusion did you come to after</p> <p>3 you reviewed it, that incident, at the cluster</p> <p>4 level?</p> <p>5 A Well, regarding the inmate's death, I</p> <p>6 concluded then, and I stick to the position to this</p> <p>7 day, that Ms. Fisher had absolutely nothing to do</p> <p>8 with that individual's death. She made what I</p> <p>9 consider, in the big picture of things, a small</p> <p>10 error and that was she did not call the physician</p> <p>11 back and inform him that the patient had changed his</p> <p>12 mind and did not want to go to the, oh --</p> <p>13 Q Skyview?</p> <p>14 A Yeah. Well, it could have been Skyview.</p> <p>15 There's a term for that. For crisis management, I</p> <p>16 think it is. And that if she had have done that and</p> <p>17 there had been an untoward outcome, then I -- it is</p> <p>18 my belief that the subsequent fallout would have</p> <p>19 gone on the doctor, not Ms. Fisher.</p> <p>20 Q Okay. But, in fact, the doctor had --</p> <p>21 since Ms. Fisher had this conversation with the</p> <p>22 inmate that -- and he refused treatment, the doctor,</p> <p>23 physician, subsequently saw the inmate; didn't he?</p> <p>24 A Well, not the on-call. However, over the</p> <p>25 course of the next, I want to say, about eight days,</p>	<p style="text-align: right;">43</p> <p>1 Q (BY MS. MILLER) And who was that?</p> <p>2 A That would have been Ms. Gotcher by that</p> <p>3 time.</p> <p>4 Q Ms. Gotcher. Okay. So we got level -- we</p> <p>5 got the facility level, we have the cluster level,</p> <p>6 and the mortality -- and what kind of time frame was</p> <p>7 all this taking? Do you recall?</p> <p>8 A Oh, my goodness. You know, those -- those</p> <p>9 things could straggle out for, believe it or not,</p> <p>10 more than a year. I don't think this one was that</p> <p>11 long. Maybe -- I don't know -- four to six months.</p> <p>12 I just don't recall. Maybe.</p> <p>13 Q But it's something that you would want</p> <p>14 to -- at your cluster and your facility level, you</p> <p>15 would want to get on something right away while you</p> <p>16 have the evidence available.</p> <p>17 A If I felt there was something done wrong</p> <p>18 on the part of nursing, I would have taken action</p> <p>19 immediately.</p> <p>20 Q Okay. And did you take any action against</p> <p>21 Ms. Fisher for that incident?</p> <p>22 A I didn't take any action against</p> <p>23 Mrs. Fisher. I put up -- I wrote -- I wrote a</p> <p>24 letter and put in her file that addressed it and I</p> <p>25 believe we developed a corrective action plan,</p>
<p style="text-align: right;">42</p> <p>1 just about every psych person on that unit either</p> <p>2 saw this man in person or at least did a chart</p> <p>3 review. In fact, the physician or the psych person</p> <p>4 did a chart review and I saw multiple entries of</p> <p>5 other psychiatric nursing staff saying essentially</p> <p>6 that he showed no sign whatever of being suicidal,</p> <p>7 was not a risk to himself or others, et cetera.</p> <p>8 Q Okay. Just so I'm understanding, then,</p> <p>9 the severity of what you call a small error, it was</p> <p>10 she didn't really follow protocol but it wasn't --</p> <p>11 it did not result in any -- it wasn't the causation</p> <p>12 of the problem.</p> <p>13 A If I may restate, she made a small error</p> <p>14 in judgment but I do not feel there was a</p> <p>15 cause-effect relationship with that offender's</p> <p>16 death.</p> <p>17 Q Okay. And to whom did you report that?</p> <p>18 A I believe to the DON.</p> <p>19 Q And that's the director of nursing?</p> <p>20 A Yes.</p> <p>21 Q And --</p> <p>22 MR. LIVELY: D or B, did you say?</p> <p>23 THE WITNESS: D, dog.</p> <p>24 MR. LIVELY: Okay.</p> <p>25 THE WITNESS: Director of nurses.</p>	<p style="text-align: right;">44</p> <p>1 not -- I don't think it was specifically at her but</p> <p>2 it was more of a to show something that we realized</p> <p>3 that maybe there had been a small oversight and we</p> <p>4 were going to educate the staff and make sure it</p> <p>5 didn't happen again, and in that letter, I was</p> <p>6 concerned that after I left, if somebody else</p> <p>7 reviewed it, that it could be interpreted as</p> <p>8 punitive and it was not, and I specifically wrote in</p> <p>9 the letter this was not a punitive letter or a</p> <p>10 letter of reprimand. I wanted that to be very</p> <p>11 clear.</p> <p>12 Q And you wrote that in the letter?</p> <p>13 A Yes.</p> <p>14 Q Was there only one letter or did you write</p> <p>15 a second letter to fix the first letter?</p> <p>16 A My recollection is there was only one</p> <p>17 letter that went into her file and -- oh, there was</p> <p>18 something else. Let me think for just a second.</p> <p>19 Oh, I remember. The reason -- the reason that I</p> <p>20 wrote that letter was, for lack of a better term, to</p> <p>21 protect her in case TDC took a dim view of this</p> <p>22 because, by doing so, I could say that it was an</p> <p>23 internal matter with UTMB, it had been addressed,</p> <p>24 and then that wouldn't really leave TDC much room to</p> <p>25 say anything. Now, if we hadn't taken any action or</p>

<p style="text-align: right;">45</p> <p>1 nothing had been done or no letter had been written, 2 I felt like they could come back and say, "Well, 3 what did you do?" Now, once the letter was written 4 and we started some sort of, you know, proactive 5 effort not to make the same mistake again, in 6 general, not Ms. Fisher in particular, that they 7 couldn't really say much. If they said something, 8 we could say, "You know what? We've addressed that. 9 It's an internal matter. You don't need to be 10 concerned about it." 11 Q And a small matter. Right? A small 12 matter. 13 A Yeah. I think so. 14 Q And from there, it goes to the mortality 15 review committee? 16 A At some point in time, yes. 17 Q All right. 18 A They do an independent review. I don't 19 know if they even look at our stuff. I think they 20 just start from scratch. 21 Q And did they seek out any information from 22 you when that was done? 23 A I don't recall. 24 Q And tell me about the mortality review 25 committee. How is that selected, if you know?</p>	<p style="text-align: right;">47</p> <p>1 result of the mortality committee review on this 2 particular instance. 3 A Can you be more specific? 4 Q Um-hmm. Was there -- does there -- 5 MS. MILLER: It's not protected. 6 It's not peer-reviewed. 7 MR. LIVELY: I'm just trying to 8 figure -- 9 MS. MILLER: It's not peer review 10 yet. 11 MR. LIVELY: Yeah. I'm just also a 12 little confused about the question. 13 MS. MILLER: Okay. Well, I can 14 rephrase the question. 15 Q (BY MS. MILLER) As a result of the 16 mortality review committee, are there 17 recommendations made by that committee? 18 A Yes. There could be. 19 Q And in Ms. Fisher's case, was there a 20 recommendation made? 21 A Yeah, there was a -- excuse me. There was 22 a recommendation to go to peer review. 23 Q A recommendation that it go to peer 24 review. 25 A Yes.</p>
<p style="text-align: right;">46</p> <p>1 A I suppose one could volunteer for it. I 2 think the -- the nurse managers, the director of 3 nurses or somebody, selects local representatives if 4 they want to and the -- and there's no objection. 5 However, it's a -- it's a multipart committee. 6 There are representatives from Texas Tech. There 7 are representatives from UTMB. There are 8 representatives from TDCJ on the committee and each 9 one of them is responsible for reviewing a certain 10 number of charts, however many they're assigned per 11 month. It wasn't uncommon that I'd get a stack of 12 charts, you know, sometimes to this tall. 13 Q And were you on the committee? 14 A I had been at one point in time when I was 15 with TDC. Once I went to UTMB, I was no longer on 16 the committee. 17 Q And the members of UTMB who were selected 18 were essentially selected by Ms. Gotcher? 19 A I'm not sure. I don't think that's an 20 unreasonable supposition but I'm just not certain. 21 Q But -- if you're not sure, that's fine. 22 And did you have any part or any activity involved 23 in the mortality committee review? 24 A None whatever. 25 Q All right. And are you aware of the</p>	<p style="text-align: right;">48</p> <p>1 Q Okay. And who makes the decision of 2 whether or not it does go to peer review? 3 A At that point in time, I don't think there 4 was any decision to be made. It went. In the peer 5 review committee, they would -- they would do a 6 preliminary review of the case, not a formal review, 7 and they would look at it and say, "This doesn't 8 merit peer review," and they won't look at it, or 9 they can look at it and say, "We will peer review 10 this. We have concerns." And there will be a 11 formal process initiated. 12 Q And you were the facilitator on that peer 13 review committee. Is that correct? 14 A I was one of two facilitators or two 15 agents. 16 Q Who were the other facilitators? 17 A One other facilitator was Kathy Jones, who 18 was a manager at my level in some southern area 19 around Houston, Sugar Land. 20 Q And by "facilitators," you -- these were 21 not members of the peer review committee. Is that 22 correct? Or these were members? 23 A They weren't voting members. We -- 24 essentially my job as a facilitator was to gather 25 documentation. If the peer review committee looked</p>

<p style="text-align: right;">49</p> <p>1 at that documentation and decided they wanted more, 2 I would go get it. I was the keeper -- in this 3 particular instance, the keeper of the records at 4 the -- at the Estelle facility. They had to be 5 stored behind, I believe it was, two locks. 6 Q And what was Kathy Jones' role in being a 7 facilitator, if that was your role? 8 A It was the same as mine but we would take 9 turns and she would -- she might even investigate 10 some of the cases too. 11 Q Did you investigate cases? 12 A Well, let me rephrase. Perhaps not 13 investigate but gather documentation. 14 Q Did you make presentations of sorts to 15 the -- to the peer review committee in terms of 16 "Here are the documents"? Any kind of explanation 17 with them? 18 A I would present the documents to them and 19 give them a brief summary of the case, and if they 20 had any questions, I would try to answer them. 21 Q Okay. Now, at some point, Ms. Gotcher had 22 authority over selecting which cases came from the 23 mortality review committee and she had some ability 24 to select and choose those that were gone -- that 25 went to the peer review committee. Do you recall</p>	<p style="text-align: right;">51</p> <p>1 Q How about a bathtub drowning in 2005? 2 A I can't call it. 3 Q Okay. At some point, the peer review -- 4 or the -- or Ms. -- this incident of the hanging 5 suicide was referred to the Board of Nursing 6 Examiners. Are you aware of that? 7 A Um-hmm. 8 Q You're aware that Ms. Fisher was under 9 examination. 10 A Yes. 11 Q Do you have an understanding as to whether 12 or not her license was ever encumbered in any 13 manner? 14 A I do not know. 15 Q Did you have any communication with the 16 Board of Nursing Examiners? 17 A Yes. When I found out this was going to 18 the board, I called one of the investigators, who I 19 cannot name at this point, and explained that I had 20 conducted an investigation and that I was her 21 supervisor and I wanted to know if it would be, I 22 guess you could say, kosher to write a letter on her 23 behalf, in support of Ms. Fisher to the board, and 24 if Ms. Fisher requested it, she said that that would 25 not be -- that would be fine.</p>
<p style="text-align: right;">50</p> <p>1 that? 2 A No. Not when I was there. It may have 3 changed since. I don't think there was any such 4 selection process at that time. Anything that was 5 sent, I think, went. 6 Q Anything that was sent from the mortality 7 review committee? 8 A I believe so, yeah. 9 Q Okay. And is that written down somewhere 10 we could verify that? Is that a written policy 11 or -- 12 A I honestly don't know. That would be 13 something that would -- you'd have to research. I 14 don't -- because I believe that take -- took place 15 after I left, so I'm not familiar. 16 Q What took place after you left? 17 A If there were changes that you 18 described -- 19 Q Oh, if there were changes. Okay. 20 A -- then I don't remember those being in 21 place when I was there. 22 Q Okay. Now, there was another instance of 23 an inmate death under -- on Mrs. Fisher's watch at 24 some point. Do you recall that? 25 A Not without some background.</p>	<p style="text-align: right;">52</p> <p>1 So I approached Ms. Fisher and told 2 her what I had found out and asked her if she would 3 be okay with that and she said she would. I drafted 4 a letter to the Board of Nurse Examiners. I showed 5 it to Ms. Fisher. In fact, I remember very 6 distinctly. It was right over here on 12th Street. 7 We were sitting in my car and I gave her a copy -- 8 it was two or three pages, I think -- and said, "I 9 would like you to look at this. If you have any 10 concerns of the wording, let me know right now and 11 we'll see if we can't fix it. I want you to be 12 satisfied with it." She looked at it and said, "No. 13 It looks okay." I took the letter, put it on 14 letterhead, signed it, sent her a copy of the actual 15 letter, and then I sent the rest of the letter, the 16 original, to the board. 17 Q Okay. Did it help? 18 A Have no way of knowing that for sure. 19 Q Okay. Other than that communication, did 20 you have any communication with the Board of Nursing 21 Examiners in -- regarding Ms. Fisher's cases? 22 A No. I don't think so. 23 Q Did you receive any communication from the 24 Board of Nursing Examiners directly -- directed to 25 you?</p>

<p style="text-align: right;">53</p> <p>1 A There may have been subpoenas. Subpoenas</p> <p>2 usually came to me. But I'm not certain.</p> <p>3 Q Okay. In terms of their findings or</p> <p>4 follow-up, would you have received a copy of the</p> <p>5 Board of Nursing Examiners' --</p> <p>6 A No. Because I didn't report --</p> <p>7 Q -- findings?</p> <p>8 MR. LIVELY: Let her finish the</p> <p>9 question.</p> <p>10 THE WITNESS: I'm sorry.</p> <p>11 Q (BY MS. MILLER) That's all right.</p> <p>12 Findings. Would you have received a copy of the</p> <p>13 findings or the order or any kind of notice of her</p> <p>14 suspension or nonsuspension?</p> <p>15 A No. That would have been directed to the</p> <p>16 chairperson of the peer review committee who had --</p> <p>17 who was in place when it was forwarded to the board.</p> <p>18 Q And the peer review committee did forward</p> <p>19 it to the board?</p> <p>20 A I believe so.</p> <p>21 Q Do we know that for sure?</p> <p>22 A I do know it for sure but I just don't</p> <p>23 remember how I know it because I knew it was going</p> <p>24 to the board at some point because that's when I --</p> <p>25 I wanted to go to her defense and ask her about</p>	<p style="text-align: right;">55</p> <p>1 A Um-hmm. Okay.</p> <p>2 Q At that point in time, which I'm</p> <p>3 representing to you is January 4th of 2006, had you</p> <p>4 had any reason to issue letters of expectation to</p> <p>5 Ms. Fisher or to reprimand her in any manner?</p> <p>6 A I don't think so.</p> <p>7 Q And certainly in your position as the --</p> <p>8 A Senior cluster manager.</p> <p>9 Q -- senior cluster nurse manager, it would</p> <p>10 have been your responsibility to reprimand and to</p> <p>11 issue letters of expectation to your nurse managers</p> <p>12 if it was required.</p> <p>13 A Yes.</p> <p>14 Q And you wouldn't have any problem doing</p> <p>15 that.</p> <p>16 A Not if I thought it was warranted.</p> <p>17 Q And prior to January 4th of 2006, you</p> <p>18 don't recall the requirement that you do that in</p> <p>19 Ms. Fisher's behalf.</p> <p>20 A Not that I recall.</p> <p>21 Q Okay. Tell me what precipitated the</p> <p>22 investigation of Ms. Fisher that began on</p> <p>23 January 9th, 2006.</p> <p>24 A Would this be when Ms. Gotcher came to</p> <p>25 the --</p>
<p style="text-align: right;">54</p> <p>1 sending the letter.</p> <p>2 Q And you have no recollection of the</p> <p>3 drowning incident that I asked you about.</p> <p>4 A Not right off. I'm sorry.</p> <p>5 MS. MILLER: Can we take a second?</p> <p>6 (Discussion off the record</p> <p>7 from 11:38 to 11:39)</p> <p>8 Q (BY MS. MILLER) Under what circumstances</p> <p>9 would a peer review committee decline to consider an</p> <p>10 instance or an incident?</p> <p>11 A I'm not sure I'm qualified to answer that</p> <p>12 because it would be taken on a case-by-case basis</p> <p>13 and they would assign that. I'm not comfortable on</p> <p>14 giving an answer.</p> <p>15 Q Okay. What's a minor incident? How would</p> <p>16 you define that?</p> <p>17 A Good Lord, I don't remember anymore. I</p> <p>18 think it would be something that would not</p> <p>19 necessarily put a person at immediate risk of loss</p> <p>20 of life or serious bodily injury. It wouldn't fit</p> <p>21 into that category but, again, it's been a while.</p> <p>22 Q Okay. Now, at some point, you began --</p> <p>23 strike that. When you had this discussion -- I'm</p> <p>24 going back to the rehire discussion of Mrs. Ford --</p> <p>25 Ms. Ford.</p>	<p style="text-align: right;">56</p> <p>1 Q That -- the whole part of that process.</p> <p>2 A Okay. I had been having conversations</p> <p>3 with Ms. Gotcher about the RMF and how things --</p> <p>4 Q Will you define "RMF" for me, please?</p> <p>5 A Regional medical facility?</p> <p>6 Q Thank you. And --</p> <p>7 A Also known as the Estelle Unit.</p> <p>8 Q And is that in -- is that a unit all</p> <p>9 self-standing -- self-contained unit?</p> <p>10 A Well, the Estelle Unit is -- is kind of a</p> <p>11 mishmash of different things. There is a building</p> <p>12 that is an old-fashioned-type prison which I think</p> <p>13 preexisted most everything else, and then they</p> <p>14 created -- I don't know what order, but they created</p> <p>15 a high-security unit that's on the same campus and</p> <p>16 it's maybe a few hundred yards away. And then they</p> <p>17 created the regional medical facility itself, which</p> <p>18 is more of a hospital-type environment. And then</p> <p>19 somewhere in that mix, they also created a geriatric</p> <p>20 unit, which is basically one big tin building that</p> <p>21 had low security inside the building.</p> <p>22 Q Okay. So there was a regional medical</p> <p>23 facility which was more like a hospital?</p> <p>24 A Well, I think of the whole complex -- and</p> <p>25 maybe not correctly so, but I think of the whole</p>

<p style="text-align: right;">57</p> <p>1 complex as the Estelle unit, the RMF. But -- but --</p> <p>2 Q So the RMF was all that was at the Estelle</p> <p>3 Unit, including the geriatric unit and what -- what</p> <p>4 other little specialized units were there?</p> <p>5 A Oh, there was also like a drug rehab</p> <p>6 program over there. I forgot about that.</p> <p>7 Q Was that -- would you consider that part</p> <p>8 of the RMF?</p> <p>9 A Well, from a nursing standpoint, yes,</p> <p>10 because if someone got sick or there was sick call,</p> <p>11 then it was the responsibility of the nurses to</p> <p>12 handle that. The building had its own nursing</p> <p>13 staff, but in -- if there were an emergency in the</p> <p>14 middle of the night and they were shorthanded, then</p> <p>15 somebody from the RMF may have to go over there and</p> <p>16 lend a hand. The RMF crew was also responsible for</p> <p>17 nursing care at the high-security unit, for staffing</p> <p>18 it. And I think that's it.</p> <p>19 Q And the high-security unit was different</p> <p>20 than the hospital.</p> <p>21 A Yes. It was a free-standing facility with</p> <p>22 its own security fence.</p> <p>23 Q And did the nurses -- the same nurses</p> <p>24 rotate among the -- I'm going to call it the</p> <p>25 hospital and the geriatric unit and the drug rehab</p>	<p style="text-align: right;">59</p> <p>1 portion. The building itself and the hospital and</p> <p>2 the geriatric unit would have been no crossover in</p> <p>3 the employees other than the nurse manager.</p> <p>4 A The building, yes. The geriatric unit</p> <p>5 was -- it's hard to describe but it wasn't inside</p> <p>6 but it was part of the -- it was and it wasn't. It</p> <p>7 was kind of a hybrid. It was a free-standing</p> <p>8 building right next to the regional medical</p> <p>9 facility. Now, as regarding the high security, if I</p> <p>10 remember correctly, they had nurses that were</p> <p>11 routinely assigned over there, but if we were</p> <p>12 short-staffed or whatever, then some nurses may have</p> <p>13 had to float and help cover.</p> <p>14 Q Okay. And the hospital is different than</p> <p>15 the regional medical facility.</p> <p>16 A They're one and the same, basically.</p> <p>17 Q Okay.</p> <p>18 A There was 106 or 110 beds. There was a</p> <p>19 dialysis unit there, three -- three pods. I think</p> <p>20 it was north, south, and something else.</p> <p>21 Q And was Ms. -- at this time, was</p> <p>22 Ms. Fisher in charge of all of these units at the</p> <p>23 Estelle facility?</p> <p>24 A At what time?</p> <p>25 Q In January of 2006.</p>
<p style="text-align: right;">58</p> <p>1 unit and the high-security unit?</p> <p>2 A I'm sorry. Say it again.</p> <p>3 Q Did the same nurses rotate? Would they</p> <p>4 have -- they have touched and worked in all those</p> <p>5 independent subunits, so to speak?</p> <p>6 A Probably not so much the building, but the</p> <p>7 other three, yes, I think so.</p> <p>8 Q The building?</p> <p>9 MS. FISHER: It's the main building.</p> <p>10 It's an independent building.</p> <p>11 Q (BY MS. MILLER) And that's different than</p> <p>12 the hospital?</p> <p>13 A It's a different structure, yes. It's --</p> <p>14 they got a connected walkway over there to it.</p> <p>15 Q All right. So let's talk -- and the</p> <p>16 building -- which facilities would the same nurses</p> <p>17 have worked among?</p> <p>18 A The regional medical facility,</p> <p>19 high-security, and the SAFP, which is -- I forget</p> <p>20 what it stands for, substance -- substance abuse</p> <p>21 something program.</p> <p>22 Q Right. And SAFP was the drug rehab.</p> <p>23 A I believe so, yes.</p> <p>24 Q Okay. So the same nurses would have had</p> <p>25 exposure to drug rehab, RMF, and the high-security</p>	<p style="text-align: right;">60</p> <p>1 A All except the building.</p> <p>2 Q Okay. All except the building. Who was</p> <p>3 in charge of the building?</p> <p>4 A I believe it was Joyce Bonds.</p> <p>5 Q And what went on in the building?</p> <p>6 A Oh, they had their own little medical</p> <p>7 clinic. I think they a two-bed ER and some exam</p> <p>8 rooms.</p> <p>9 Q And Joyce Bond was a nurse manager?</p> <p>10 A She was the only nurse manager.</p> <p>11 Q All right.</p> <p>12 A And by way of distinction, Ms. Fisher was</p> <p>13 a cluster nurse manager. Now, even though the</p> <p>14 Estelle Unit wasn't scattered out geographically</p> <p>15 over two or three counties as some of them were, it</p> <p>16 was so big that it was considered -- or that</p> <p>17 position was a cluster nurse manager position.</p> <p>18 Ms. Bonds was a nurse manager position, which would</p> <p>19 be like a step below.</p> <p>20 Q And as a cluster nurse manager, Ms. Fisher</p> <p>21 didn't have any responsibilities that extended</p> <p>22 beyond the Estelle Unit at that time.</p> <p>23 A She was responsible for everything except</p> <p>24 the building.</p> <p>25 Q Okay.</p>

<p style="text-align: right;">61</p> <p>1 A On the --</p> <p>2 Q At Estelle.</p> <p>3 A At Estelle. I know it's kind of --</p> <p>4 Q But she didn't have another facility</p> <p>5 somewhere else --</p> <p>6 A No.</p> <p>7 Q -- that she had to drive to and --</p> <p>8 A No.</p> <p>9 Q Okay. All right. So got the RMF and I</p> <p>10 interrupted my -- your answer to my question was:</p> <p>11 What precipitated the investigation that was</p> <p>12 initiated on a -- into Ms. Fisher's work that began</p> <p>13 on January 9th of 2006?</p> <p>14 A Well, as I said, I had been having</p> <p>15 conversations with Ms. Gotcher fairly regularly and</p> <p>16 I had discussed with her concerns that I had, so</p> <p>17 forth, over the preceding few months and she had</p> <p>18 offered to come down and take a look, if I wanted</p> <p>19 to, and I declined. I wanted to try to do</p> <p>20 everything I could myself to resolve any issues or</p> <p>21 concerns. And finally one day, I had a phone</p> <p>22 conversation with her and she made an offer again</p> <p>23 and -- and I said, "Sure. Why not?" I said, "I</p> <p>24 need an -- I need just somebody -- maybe I'm too</p> <p>25 close to the problem. Maybe I'm not seeing the</p>	<p style="text-align: right;">63</p> <p>1 that's largely it.</p> <p>2 Q And so those were the concerns or the</p> <p>3 problems that you had identified?</p> <p>4 A Well, yes. And also there was -- in my</p> <p>5 opinion, there was a problem with the communication</p> <p>6 between Ms. Fisher and her nurse managers. I met</p> <p>7 with them on March 10th and I don't -- I guess it</p> <p>8 would probably have to be '06, just by process of</p> <p>9 elimination, and we sat down as a group and they</p> <p>10 expressed their concerns and she expressed her</p> <p>11 concerns and I thought, to a large degree, it was a</p> <p>12 lack of communication. And I directed them to try</p> <p>13 to meet at least weekly and keep up with each other</p> <p>14 on any changes and problems and so forth, and more</p> <p>15 often, if needed.</p> <p>16 Q Okay. I'm going to stop you there just</p> <p>17 for a minute because you got ahead of me. I was</p> <p>18 back in January and you went to March already,</p> <p>19 Mr. Watson.</p> <p>20 A I'm sorry. I'll try to slow down. Just</p> <p>21 rein me in.</p> <p>22 Q Okay. All right. So back in January, you</p> <p>23 said you had spoken -- if I can -- can understand,</p> <p>24 you had spoken to Ms. Gotcher on a number of</p> <p>25 occasions about your concerns of -- in the Estelle</p>
<p style="text-align: right;">62</p> <p>1 forest for the trees but, you know, feel -- come</p> <p>2 down and have a look and tell me what you think."</p> <p>3 Q Well, if you were close to the problem,</p> <p>4 could you identify the problem?</p> <p>5 A I feel like I could --</p> <p>6 Q And --</p> <p>7 A -- but I wanted, you know, external</p> <p>8 verification.</p> <p>9 Q And what did you identify as the problem?</p> <p>10 A Well, there was a general lack of morale.</p> <p>11 People were leaving, turning over, requesting to</p> <p>12 transfer. In fact, I denied two requests from the</p> <p>13 assistant nurse managers there at Estelle who wanted</p> <p>14 to leave out from under Ms. Fisher and I told them,</p> <p>15 no, they needed to stay and try work with her and</p> <p>16 give her a chance. And I've had -- I would have a</p> <p>17 nurse -- in fact, I can remember one incident fairly</p> <p>18 clearly where two nurses met me in the hallway and</p> <p>19 they had complaints. Ms. Fisher wasn't treating</p> <p>20 them right or whatever. And I said, "Well, are you</p> <p>21 willing to put that in writing?" "No." I said,</p> <p>22 "Well, then you're just whining. I don't want to</p> <p>23 hear it." And so the ER nurses were up in arms</p> <p>24 because Ms. Fisher had made some changes at the ER</p> <p>25 and the turnover rate was -- was a concern. I think</p>	<p style="text-align: right;">64</p> <p>1 Unit.</p> <p>2 A Yes.</p> <p>3 Q And on January 9th, again, she offered to</p> <p>4 provide her assistance and that's when the</p> <p>5 investigation of -- into Ms. Fisher began.</p> <p>6 A I'm not sure of the date but -- but, yes,</p> <p>7 as far as the transaction goes, yes, that's correct.</p> <p>8 Q Okay. And you indicated that you had told</p> <p>9 Ms. Gotcher that -- about the concerns and that you</p> <p>10 had done everything you could do and you needed some</p> <p>11 outside assistance. Is that -- am I fairly</p> <p>12 summarizing what you said?</p> <p>13 A I just wanted an outside perspective to</p> <p>14 either come in and look and validate that, "Yes,</p> <p>15 I've looked at this and I agree with your concerns,"</p> <p>16 or "No, Mr. Watson. You're completely off and</p> <p>17 here's what we think we see."</p> <p>18 Q So if we agree that at least this happened</p> <p>19 in January of 2006 -- let's leave the March</p> <p>20 conversation till later -- what had you done to help</p> <p>21 Ms. Fisher or to identify concerns with her or to</p> <p>22 instruct her or review with her how she might</p> <p>23 improve?</p> <p>24 A Well, I talked about being better</p> <p>25 communication.</p>

<p style="text-align: right;">65</p> <p>1 Q And that's a discussion you had with her?</p> <p>2 A Well, that was -- we've had the discussion</p> <p>3 several times but that was a particular discuss --</p> <p>4 oh, I'm sorry. That's goes forward to March 10th.</p> <p>5 I'm sorry. Let me back up.</p> <p>6 Q So at the time this investigation began,</p> <p>7 what steps had you already taken that you felt were</p> <p>8 not productive?</p> <p>9 A I encouraged better communication. I</p> <p>10 talked to Ms. Fisher on several occasions that the</p> <p>11 staff felt like she was abrupt and a little</p> <p>12 unapproachable, that there was a lot of e-mails</p> <p>13 instead of face-to-face conversations, and</p> <p>14 encouraged her to -- to speak, you know, more in</p> <p>15 person with the staff and to -- sometimes when she's</p> <p>16 passionate or motivated, she has a tendency to talk</p> <p>17 over people and cut them off and I asked her to</p> <p>18 please be conscious of that. And also, somewhere in</p> <p>19 this time frame, had suggested I -- she wanted to</p> <p>20 make some changes and I had suggested that she</p> <p>21 approach it more systematically and get buy-in from</p> <p>22 the staff and help them be part of the solution and</p> <p>23 lead them and make them be stakeholders and guide</p> <p>24 them as opposed to just going and making changes.</p> <p>25 Q Okay. And those were verbal conversations</p>	<p style="text-align: right;">67</p> <p>1 the last minute. And then they set up shop, so to</p> <p>2 speak. They had reserved a conference room, and</p> <p>3 anybody that wanted to come and talk to them was</p> <p>4 welcome to come and talk, share their views and</p> <p>5 feelings and so forth.</p> <p>6 Q Do you happen to recall the date --</p> <p>7 A No, ma'am.</p> <p>8 Q -- that this happened?</p> <p>9 A I do not.</p> <p>10 Q But, yet, you were able to recall the</p> <p>11 March 10th date. How can you recall that one?</p> <p>12 A It just so happens that I remember that</p> <p>13 particular e-mail.</p> <p>14 Q Okay. So when Ms. Gotcher came to the</p> <p>15 unit, how was it determined when she would come?</p> <p>16 A I don't recall. She -- she checked her</p> <p>17 calendar and said, "Why don't I come on this date,"</p> <p>18 or that date or this range of dates and said, "Okay.</p> <p>19 Fine."</p> <p>20 Q And it just happened to be a date that</p> <p>21 Ms. Fisher was out on family medical leave?</p> <p>22 A It -- I remember Ms. Fisher was out. I</p> <p>23 don't know if the dates --</p> <p>24 Q Or bereavement? I'm sorry.</p> <p>25 A I'm not sure. I just remember she was</p>
<p style="text-align: right;">66</p> <p>1 you had with Ms. Fisher. Did you have any written</p> <p>2 expectations or any written consultations with her</p> <p>3 prior to the time this investigation --</p> <p>4 A I don't think so. I was --</p> <p>5 Q -- was begun?</p> <p>6 A I don't think so. I was very motivated to</p> <p>7 be able to coach and encourage her. And when I say</p> <p>8 "coach," I don't mean in a punitive sort of way. I</p> <p>9 mean in a, you know, "I know you've got the talent.</p> <p>10 You can do this. Let's go get them, you know."</p> <p>11 Q And she is very talented.</p> <p>12 A She's very talented.</p> <p>13 Q And she's pretty no-nonsense; isn't she?</p> <p>14 A She can be.</p> <p>15 Q So those were the things that you had</p> <p>16 tried and then Ms. Gotcher got involved. Is that</p> <p>17 correct?</p> <p>18 A Yes.</p> <p>19 Q All right. Tell me what happened when</p> <p>20 Ms. Gotcher got involved.</p> <p>21 A She came to the unit. She did some</p> <p>22 walking around. I don't know how extensive it was.</p> <p>23 I don't think I went with her. She and</p> <p>24 Ms. Melton -- Ms. Melton from HR came too, which I</p> <p>25 guess I didn't really know she was coming till at</p>	<p style="text-align: right;">68</p> <p>1 out. And I don't know if the dates were -- the</p> <p>2 dates, in other words, may have been determined</p> <p>3 ahead of time before she went out. I don't know</p> <p>4 exactly what the relationship was between when dates</p> <p>5 were selected and when she went out on leave.</p> <p>6 Q And the reason they came to the unit?</p> <p>7 What was their intended purpose, as far as you knew?</p> <p>8 You knew they were coming. Right?</p> <p>9 A I -- well, I knew Ms. Gotcher was coming</p> <p>10 to talk to the staff, allow the staff to talk to</p> <p>11 them. If they had anything they wanted to say,</p> <p>12 good, bad, or indifferent, go share -- go share with</p> <p>13 Ms. Gotcher their feelings, views.</p> <p>14 Q And how was that communicated to the</p> <p>15 staff?</p> <p>16 A I sent an e-mail out to the staff, I</p> <p>17 thought to everyone at the time.</p> <p>18 Q To -- to whom?</p> <p>19 A To the entire staff. There are -- there</p> <p>20 were one or more e-mail lists in the computer and I</p> <p>21 picked at least one or more that I thought would go</p> <p>22 to as many people as possible.</p> <p>23 Q And so it went to all the staff at the</p> <p>24 Estelle Unit?</p> <p>25 A I'm not sure.</p>

<p style="text-align: right;">69</p> <p>1 Q Okay. Was there any pretense or -- strike</p> <p>2 that. That's a bad word. Was there any effort to</p> <p>3 extend this investigation to Ms. Bonds' employees?</p> <p>4 A No. Because that was a separate staffing</p> <p>5 over in the building.</p> <p>6 Q Okay. Was that e-mail sent to her</p> <p>7 employees?</p> <p>8 A I don't recall.</p> <p>9 Q So this was clearly focused only on</p> <p>10 Ms. Fisher.</p> <p>11 A This was clearly focused on the regional</p> <p>12 medical facility and the -- yes. The people that --</p> <p>13 under her supervision.</p> <p>14 Q Okay. And do you -- they were there for</p> <p>15 two days? Is that correct?</p> <p>16 A It was at least two, maybe three.</p> <p>17 Q Okay. Did you work with them while they</p> <p>18 were there?</p> <p>19 A No, ma'am.</p> <p>20 Q Okay. Did you -- did you speak with any</p> <p>21 employees yourself while -- during their visit</p> <p>22 there?</p> <p>23 A I spoke with two. There was Dr. Vincent.</p> <p>24 I went to Dr. Vincent personally and said that I was</p> <p>25 aware that there were certain members of the staff</p>	<p style="text-align: right;">71</p> <p>1 Q Well, you defined "pettiness" and I picked</p> <p>2 up your word, so -- "petty jealousies," I think, was</p> <p>3 your expression. How would you define that?</p> <p>4 A I don't remember making that comment. Can</p> <p>5 I have her read it?</p> <p>6 Q Well, we can have the court read it back.</p> <p>7 THE WITNESS: I did say that? Give</p> <p>8 me the context.</p> <p>9 MR. LIVELY: While you're looking at</p> <p>10 it, can we take a little break?</p> <p>11 MS. MILLER: Let's finish just this</p> <p>12 question, please.</p> <p>13 MR. LIVELY: Okay. Go ahead.</p> <p>14 MS. MILLER: Go ahead and tell him so</p> <p>15 he knows.</p> <p>16 (Requested answer was read)</p> <p>17 Q (BY MS. MILLER) So in that context that</p> <p>18 you used the term "petty jealousies," how would you</p> <p>19 describe those?</p> <p>20 A Well, I would reserve the right to go back</p> <p>21 and say I may not have characterized that ideally</p> <p>22 under petty jealousies. There were -- there were</p> <p>23 people who were unhappy. They didn't like</p> <p>24 Ms. Fisher's style. They felt like she was -- what</p> <p>25 is the word I want to say? She -- favoritism, I</p>
<p style="text-align: right;">70</p> <p>1 who were disgruntled and unhappy and may want to</p> <p>2 talk to, you know, Ms. Gotcher, but I was also aware</p> <p>3 of the fact that there were probably some people</p> <p>4 that were quite happy, and I felt like it was</p> <p>5 important that both sides of the story be told and</p> <p>6 would he mind spreading the word to go and speak.</p> <p>7 If they were happy, go and let Ms. Gotcher know. He</p> <p>8 said he would.</p> <p>9 And then there was another -- there</p> <p>10 was another lady. She -- I'm sorry. I can't think</p> <p>11 of her name. She was a med tech, I think, in the</p> <p>12 pharmacy. I mean, when I say "I think," I think she</p> <p>13 was a med tech. I know she was assigned to the</p> <p>14 pharmacy. And in my mind, she had a good reputation</p> <p>15 for being unbiased and didn't get, as far as I could</p> <p>16 tell, into petty jealousies. I thought she would</p> <p>17 give a good or fair assessment and I went to her and</p> <p>18 approached her and asked her if she would be</p> <p>19 interested in going and talking and she said, "As a</p> <p>20 matter of fact, I just came back."</p> <p>21 Q Okay. And, in fact, there were -- there</p> <p>22 was a lot of pettiness that went on at the Estelle</p> <p>23 Unit; wasn't there?</p> <p>24 A I'm not comfortable commenting on that</p> <p>25 without knowing "pettiness."</p>	<p style="text-align: right;">72</p> <p>1 guess, that she played favorites, and -- and I</p> <p>2 thought it was important that both sides of the</p> <p>3 story be told and I thought Ms. Fisher needed to get</p> <p>4 every benefit of the doubt.</p> <p>5 Q Who did Ms. Fisher replace at the Estelle</p> <p>6 Unit?</p> <p>7 A Mary Adams.</p> <p>8 Q Okay. And, in fact, there were complaints</p> <p>9 against Ms. Adams, too; weren't there? Similar to</p> <p>10 those against Ms. Fisher.</p> <p>11 A I don't believe they were to the degree.</p> <p>12 Every nurse manager from time to time, I would get</p> <p>13 complaints, "I didn't like the way she said this.</p> <p>14 You know, I didn't like the way she made the</p> <p>15 schedule out." But they were -- they tended to be</p> <p>16 more isolated, and if I detected a pattern, I might</p> <p>17 look into it more. I don't remember there being</p> <p>18 such a pattern with Ms. Adams.</p> <p>19 Q And who replaced Ms. Fisher in the Estelle</p> <p>20 Unit?</p> <p>21 A Ultimately it was Judy Upshaw.</p> <p>22 Q And in the -- immediately, who was it?</p> <p>23 A Ms. McCartney. I assigned Ms. McCartney</p> <p>24 to be the front-line supervisor with me backing her</p> <p>25 up.</p>

<p style="text-align: right;">73</p> <p>1 Q And there were complaints against 2 Ms. McCartney also; weren't there? 3 A Not that I recall. 4 MS. MILLER: Okay. Now you can have 5 your break. 6 MR. LIVELY: Okay. That's fine. 7 (Recess from 12:01 to 12:09) 8 Q (BY MS. MILLER) Mr. Watson, we were 9 talking about some of the problems that you had 10 identified and concerns you had with Ms. Fisher that 11 precipitated this investigation in January of 2006, 12 and one of them was the turnover rate concern you 13 had for the Estelle Unit? 14 A (Moving head up and down) 15 Q And how did you monitor that? 16 A HR monitored that for us because they knew 17 who -- who hired and who -- who quit and what dates 18 and so on and so forth. 19 Q And, in fact, there was a report that was 20 printed regarding that; wasn't there? 21 A There was, but I don't remember the -- the 22 data anymore. I just remember there was one done. 23 Q Sure. But you would have looked at a 24 report to get some hard data rather than just 25 assuming. Correct?</p>	<p style="text-align: right;">75</p> <p>1 position that was unfilled, you needed it somewhere 2 else, you slid it over to another facility? 3 A Ms. Box was usually in charge of taking 4 care of those things and I wasn't directly involved. 5 That may, in fact, be the case. I think we usually 6 lost positions as a result of -- if you had, say, 20 7 positions that were open for X amount of time and 8 there was no possibility of refilling them, they 9 just may delete the positions. 10 Q They weren't moved to other places? 11 A I won't say it never happened but I don't 12 know that it was commonplace. 13 Q So it was my understanding -- and correct 14 me if I'm wrong -- then from what you're saying -- I 15 may be. I understood that the Estelle might have -- 16 and I'll just pick a number -- say 50 positions and 17 at times that might be 54 positions and at times 18 that might be 47 positions that were assigned as the 19 Estelle Unit positions. Did that happen to that 20 kind of amorphous kind of number? 21 A I don't recall it being that way. They 22 were -- 23 Q Okay. 24 A I thought they were fairly static. 25 Q Okay. Was anyone under your particular</p>
<p style="text-align: right;">74</p> <p>1 A (Moving head up and down) 2 Q You have to say "yes" or "no." 3 A Yeah. I'm sorry. Yes. I'm sorry. Yes. 4 Yes. 5 Q Okay. And the turnover rate is different 6 than vacancy rate, I'm assuming. 7 A Yes. 8 Q All right. And, in fact, the turnover 9 rate was monitored, voluntary turnover and 10 involuntary turnover. Correct? 11 A I don't recall that one way or the other. 12 Q Okay. And the vacancy rate was how many 13 openings that -- 14 A I don't remember the data specifically. 15 Q No, I'm not asking for the data. 16 A Oh. 17 Q I'm asking for the definition. The 18 vacancy rate was how many openings in each facility. 19 A I think so. 20 Q Okay. And, now, isn't it true that 21 positions were said to each facility but 22 occasionally those were moved around? It wasn't a 23 static thing like Estelle had 42 positions and they 24 always had 42 positions and it never changed from 42 25 positions. Isn't that true? You might have a</p>	<p style="text-align: right;">76</p> <p>1 supervision and any other nurse manager ever demoted 2 over a turnover rate or vacancy rate? 3 A Not that I can recall. 4 Q Okay. Now, you talked about people 5 that -- people had complained to you prior to this 6 investigation being initiated. 7 A Yes. 8 Q All right. And these were staff members 9 that reported to Ms. Fisher. Is that correct? 10 A Yes. 11 Q Can you tell me specific names of staff 12 members who reported to Ms. Fisher who had directly 13 complained to you? 14 A Well, Mr. Aguilar was one. Ms. McCartney 15 was another one. Ms. Gossett was another one. I'm 16 sorry. Am I going too fast? 17 Q You are. I can't write very fast. Okay. 18 Aguilar. 19 A Um-hmm. 20 Q McCartney. 21 A Yes. Gossett. 22 Q Gossett. 23 A Franks, Darby, Moreau, Lauder, Anderson. 24 That was at the Estelle Unit and there may have been 25 more but those are the ones I can recall.</p>

<p style="text-align: right;">77</p> <p>1 Q From Estelle?</p> <p>2 A Yes, ma'am.</p> <p>3 Q And are all these RNs or LVNs?</p> <p>4 A I'm not sure what Ms. Franks is. Yeah.</p> <p>5 Yeah. I think that's true. I think they're either</p> <p>6 RNs or LVNs.</p> <p>7 Q Okay. And is -- are any, Mr. Aguilar,</p> <p>8 Ms. McCartney, Ms. Gossett, Ms. Franks, Ms. Darby,</p> <p>9 Ms. Moreau, Ms. Lauder, and Ms. Anderson, are any of</p> <p>10 those African Americans?</p> <p>11 A Think about that one for a minute. No. I</p> <p>12 don't believe so.</p> <p>13 Q Okay. And I believe that-- you indicated</p> <p>14 you encouraged two employees to talk to Ms. Gotcher</p> <p>15 and Ms. Melton when they were there and that was</p> <p>16 Dr. Vincent and a med tech you didn't recall the</p> <p>17 name of, but you can probably visualize her in your</p> <p>18 mind; can't you? Was she African American?</p> <p>19 A Yes.</p> <p>20 Q And Dr. Vincent is also African American.</p> <p>21 A Yes.</p> <p>22 Q Any white employees that you encouraged to</p> <p>23 go talk to Ms. Gotcher?</p> <p>24 A Well, Ms. Franks was one of those that</p> <p>25 came to me and there was another nurse with her</p>	<p style="text-align: right;">79</p> <p>1 Q Okay. And was that report written or is</p> <p>2 that oral?</p> <p>3 A That report was oral.</p> <p>4 Q Do you recall who gave you that report?</p> <p>5 A It was Ms. Gotcher and Ms. Melton</p> <p>6 together.</p> <p>7 Q So both -- you got information from both?</p> <p>8 A Yes.</p> <p>9 Q And what do you recall being their -- the</p> <p>10 content of their report?</p> <p>11 A Their determination was that they heard</p> <p>12 the same complaints that I heard, that they felt</p> <p>13 that the conclusions that I had drawn were valid.</p> <p>14 Q And what conclusions exactly had you</p> <p>15 drawn? I'm -- I don't think we asked that.</p> <p>16 A Difficult -- difficulty -- or lack of</p> <p>17 approachability, ineffective leadership. They also</p> <p>18 came up with racism and -- let me think. What else?</p> <p>19 I just went blank. Preferential treatment, I</p> <p>20 suppose, for a select number of employees would be</p> <p>21 how it -- "favoritism" would be the word I'm</p> <p>22 struggling for.</p> <p>23 Q So lack of approachability, inferior</p> <p>24 leadership -- was it inferior leadership?</p> <p>25 MS. FISHER: Ineffective.</p>
<p style="text-align: right;">78</p> <p>1 whose name I can't recall. I can -- I can see her</p> <p>2 in my mind. And they came to me and said, "You</p> <p>3 know, we're unhappy," and this, that, and the other</p> <p>4 thing. "And I said, "Well, Ms. -- Ms. Gotcher will</p> <p>5 be here." We had already set the date.</p> <p>6 "Ms. Gotcher will be here and if you want to go and</p> <p>7 register your complaints or concerns with her, feel</p> <p>8 free to do so." And they said, "Well, we don't want</p> <p>9 to do that because we're afraid of retaliation."</p> <p>10 And I said, "Then don't -- don't come and complain</p> <p>11 to me. Here's your chance if you want to go say</p> <p>12 something."</p> <p>13 Q Okay. And, in fact, during that</p> <p>14 investigation, it was two days? Correct?</p> <p>15 A At least.</p> <p>16 Q Did you get a report on the results of</p> <p>17 that investigation?</p> <p>18 A At some point, I did.</p> <p>19 Q Okay.</p> <p>20 A I don't remember exactly when it was. I</p> <p>21 believe it was at the conclusion. When I say "at</p> <p>22 the conclusion," meaning that day, whenever they did</p> <p>23 it.</p> <p>24 Q It was two days, though. Right?</p> <p>25 A (Moving head up and down)</p>	<p style="text-align: right;">80</p> <p>1 Q (BY MS. MILLER) Ineffective leadership.</p> <p>2 I can't read my own writing. And racism and</p> <p>3 favoritism. Anything else?</p> <p>4 A That's all that comes to mind.</p> <p>5 Q Okay. And while Ms. Gotcher and</p> <p>6 Ms. Melton were there, did you develop a plan of</p> <p>7 action to assist Ms. Fisher?</p> <p>8 A I didn't per se, at least not that I</p> <p>9 recall. Ms. Gotcher formulated a plan, as I recall</p> <p>10 it, to -- to talk to the staff, to meet with the</p> <p>11 staff, and present some sort of resolution.</p> <p>12 Q And were you in concurrence with that</p> <p>13 approach?</p> <p>14 A Oh, I didn't object to it. At that point</p> <p>15 in time, I didn't really know what else to do.</p> <p>16 Q And, indeed, did that happen?</p> <p>17 A There was a meeting. It was held inside</p> <p>18 the RMF. Ms. Gotcher was there. I was there. I'm</p> <p>19 not sure who all else was there.</p> <p>20 Q And what happened in that meeting?</p> <p>21 A I believe she presented a document that</p> <p>22 basically said, "Okay. The expectations from the</p> <p>23 staff are XYZ and the expectation from Ms. Fisher</p> <p>24 are similar." I mean, corresponding, if you will.</p> <p>25 Q Okay. And this was a meeting that was</p>

<p style="text-align: right;">81</p> <p>1 managed by Ms. Gotcher?</p> <p>2 A Yes, ma'am.</p> <p>3 Q And you were in attendance.</p> <p>4 A Yes, ma'am.</p> <p>5 Q Did you have any input in the content of</p> <p>6 the meeting?</p> <p>7 A I don't remember.</p> <p>8 Q Did you have any input in the content of</p> <p>9 the expectations that were assigned to Ms. Fisher?</p> <p>10 A I'm sure we discussed it, but as far as</p> <p>11 specifics or particulars, I don't recall.</p> <p>12 Q Okay. And was there an attendant time</p> <p>13 frame given to these expectations of the staff and</p> <p>14 as of -- of Ms. Fisher?</p> <p>15 A I feel sure there was but I couldn't</p> <p>16 articulate what it was.</p> <p>17 Q Okay. And these expectations of</p> <p>18 Ms. Fisher, were these a -- was this a reprimand of</p> <p>19 Ms. Fisher?</p> <p>20 A In my mind, it was not a reprimand. It</p> <p>21 was more along the lines of corrective action or</p> <p>22 somehow to resolve the issues.</p> <p>23 Q Okay. It was a corrective action. That's</p> <p>24 not a reprimand?</p> <p>25 A A corrective action could be, I suppose,</p>	<p style="text-align: right;">83</p> <p>1 about this same time?</p> <p>2 A No. I don't recall it.</p> <p>3 Q As long as --</p> <p>4 A If you had documents I could review, I</p> <p>5 would, maybe.</p> <p>6 Q Okay. Well, we'll get to that. As her</p> <p>7 supervisor, you were the one responsible for her</p> <p>8 evaluations, her performance evaluations. Right?</p> <p>9 A Yes.</p> <p>10 Q And did you review the notes of the</p> <p>11 investigation?</p> <p>12 A Did not.</p> <p>13 Q Okay. And were there -- was there a</p> <p>14 written report ever made of the investigation, to</p> <p>15 your knowledge?</p> <p>16 A Not to my knowledge.</p> <p>17 Q Now, at some point, you made the decision</p> <p>18 to demote Ms. Fisher. Is that correct?</p> <p>19 A At some point in time, a decision was</p> <p>20 made, yes.</p> <p>21 Q And tell me how that decision came about.</p> <p>22 A It was -- it was made in conjunction</p> <p>23 between myself, Ms. Gotcher, and I believe</p> <p>24 Ms. Melton.</p> <p>25 Q And Ms. Melton's position was?</p>
<p style="text-align: right;">82</p> <p>1 but in this particular case, I didn't -- I didn't</p> <p>2 feel like it was, in my opinion, no.</p> <p>3 Q And if you were a manager and you were</p> <p>4 given a list of expectations based on complaints of</p> <p>5 your subordinates and this was given to you in front</p> <p>6 of your subordinates, you wouldn't take that as a</p> <p>7 reprimand?</p> <p>8 A Well, I've never had it happen, so I don't</p> <p>9 know if I could -- it would be speculative to</p> <p>10 answer.</p> <p>11 Q Okay. And were you -- did you speak in</p> <p>12 these meetings?</p> <p>13 A I can't recall.</p> <p>14 Q Okay. So if I represent to you it was</p> <p>15 these -- these expectations were represented with a</p> <p>16 90-day -- as a 90-day action plan and a 90-day --</p> <p>17 with a 90-day review, does that trigger your memory</p> <p>18 in any way in understanding the time frame attached</p> <p>19 to it?</p> <p>20 A No. I don't recall.</p> <p>21 Q Okay. After -- do you recall when this</p> <p>22 meeting took place?</p> <p>23 A No.</p> <p>24 Q Do you recall reviewing or giving</p> <p>25 Ms. Fisher her annual performance review shortly --</p>	<p style="text-align: right;">84</p> <p>1 A It was a fairly new position created. It</p> <p>2 was the northern division HR supervisor, I guess.</p> <p>3 Q But she was part of the HR --</p> <p>4 A Oh, yes.</p> <p>5 Q -- contingent?</p> <p>6 A Absolutely.</p> <p>7 Q So it was a mutual decision among the</p> <p>8 three of you. How did you arrive at that decision?</p> <p>9 A It was -- it was arrived at by discussion.</p> <p>10 Ms. Melton wanted to demote Ms. Fisher to a staff</p> <p>11 nurse. I didn't agree with that. I didn't think it</p> <p>12 was appropriate or fair and I voiced that concern</p> <p>13 and it was taken under advisement, and I don't think</p> <p>14 a decision was -- a final decision was made right</p> <p>15 then. A day or so later -- because we -- we met in</p> <p>16 person for this discussion. So a day or so later, I</p> <p>17 thought about it and I had looked over Ms. Fisher's</p> <p>18 evaluations when she was an assistant nurse manager</p> <p>19 and I didn't see anything in there that I felt like</p> <p>20 would preclude her functioning in that capacity. So</p> <p>21 I called Ms. Gotcher back again and said, "I am not</p> <p>22 comfortable with this, a staff nurse." And</p> <p>23 ultimately, I guess HR signed off on it.</p> <p>24 Q Okay. Did you not issue a letter of</p> <p>25 expectation telling Ms. Fisher that you intended to</p>

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<p style="text-align: right;">85</p> <p>1 demote her to a Nurse Clinician III?</p> <p>2 A That letter was -- was formulated. I</p> <p>3 don't know that I gave it to her. It was about this</p> <p>4 point in time, ironically, that I ended up going in</p> <p>5 the hospital. So some of this took place in my</p> <p>6 absence.</p> <p>7 Q Okay. From the time that she -- that you</p> <p>8 had this meeting with the staff and Ms. Fisher to go</p> <p>9 over the expectations to the time that she left --</p> <p>10 or she was given the notice of intent to demote to a</p> <p>11 Staff Clinician III, she was out on -- a significant</p> <p>12 amount of time on Family Medical Leave Act; was she</p> <p>13 not?</p> <p>14 A I remember that she went out on Family</p> <p>15 Medical Leave, but as far as a time goes, I'm not --</p> <p>16 Q Okay. And indeed, we'll talk more about</p> <p>17 the corrective action, the timing that she was given</p> <p>18 to take the corrective action of the expectations.</p> <p>19 She, in fact, was demoted before that time frame</p> <p>20 ran; wasn't she?</p> <p>21 A I don't remember what the time frame was,</p> <p>22 so I --</p> <p>23 Q Okay.</p> <p>24 A I'm not sure.</p> <p>25 Q Even if you don't, she was demoted before</p>	<p style="text-align: right;">87</p> <p>1 to my mind where I didn't agree with the demotion</p> <p>2 was in Palestine.</p> <p>3 Q Okay. And you had a series of meetings --</p> <p>4 you had a series of meetings with Ms. Melton and</p> <p>5 Ms. Gotcher regarding Ms. Fisher?</p> <p>6 A Yes.</p> <p>7 Q All right. Did anybody take notes of</p> <p>8 those meetings?</p> <p>9 A Not sure. I don't think I did. Ms. --</p> <p>10 Ms. Melton was very note -- a big note taker. She</p> <p>11 may have.</p> <p>12 Q Okay. And what happened in the interim</p> <p>13 between the time that you had the meeting with the</p> <p>14 staff and Ms. Fisher and the time that it was</p> <p>15 determined that she should be demoted to whatever</p> <p>16 level?</p> <p>17 A Um-hmm.</p> <p>18 Q What happened in the interim of that time</p> <p>19 frame to have you take that next step of demoting</p> <p>20 her?</p> <p>21 A There weren't any changes -- there weren't</p> <p>22 any positive changes at the RMF. I believe the</p> <p>23 vacancy rate either remained the same or continued</p> <p>24 to grow. The nurse -- assistant nurse managers were</p> <p>25 consistently unhappy working in that environment.</p>
<p style="text-align: right;">86</p> <p>1 the time frame expired.</p> <p>2 A Okay.</p> <p>3 Q I'm asking you if you recall that.</p> <p>4 A I don't know how to answer. I don't</p> <p>5 remember what the time frame was but I do recall she</p> <p>6 was demoted, yes.</p> <p>7 Q Okay. And wouldn't you, in terms of --</p> <p>8 did you intend to demote her when you had this</p> <p>9 meeting with the staff and gave her the</p> <p>10 expectations?</p> <p>11 A I didn't.</p> <p>12 Q Do you -- did -- as far as you know, did</p> <p>13 Ms. Gotcher or Ms. Melton?</p> <p>14 A Not as far as I know, no.</p> <p>15 Q So I want to go through these steps pretty</p> <p>16 clearly. You had the meeting with the staff and</p> <p>17 with Ms. Fisher, and the staff and Ms. Fisher both</p> <p>18 got expectations.</p> <p>19 A That's my recollection.</p> <p>20 Q Okay. And then sometime after that, you</p> <p>21 and Ms. Gotcher and Ms. Melton had a meeting.</p> <p>22 A Correct.</p> <p>23 Q And where was that meeting? Where did</p> <p>24 that meeting take place?</p> <p>25 A There was a series but the one that comes</p>	<p style="text-align: right;">88</p> <p>1 In fact, one of them transferred; one of them quit.</p> <p>2 Q Aguilar?</p> <p>3 A Aguilar transferred --</p> <p>4 Q Aguilar?</p> <p>5 A -- outside the cluster. I couldn't stop</p> <p>6 that. In fact, he may have promoted. I'm not sure.</p> <p>7 Ms. Gossett quit. There was a concern that the --</p> <p>8 their RMF could -- could fail at some point in time.</p> <p>9 Four of the ER nurses came forward and essentially</p> <p>10 told me that "It's either Ms. Fisher or us, we're</p> <p>11 going to leave," and --</p> <p>12 Q And who were those four nurses?</p> <p>13 A Darby, Lauder, Moreau, and Anderson.</p> <p>14 Q Do you know if they're still there?</p> <p>15 A I know Darby is not.</p> <p>16 Q Do you know what happened to Darby?</p> <p>17 A She works at the hospital where I work.</p> <p>18 That's why I know she's not there.</p> <p>19 Q Oh, okay. Do you know what happened to</p> <p>20 her at UTMB?</p> <p>21 A I'm not for sure. I think she retired but</p> <p>22 I wouldn't swear to it.</p> <p>23 Q Okay. So four nurses came forward. They</p> <p>24 come to you?</p> <p>25 A Yes.</p>

<p style="text-align: right;">89</p> <p>1 Q And do you -- did you ask them if they had 2 gone to work with Ms. Fisher on these issues? 3 A Well, they came to me with a series of 4 complaints about Ms. Fisher and we went through them 5 one by one. It seemed to me some of those were 6 probably justified but then some of them were not 7 justified, and I told them so. 8 Q And part -- as part of your meeting that 9 you had with Ms. Fisher and staff where both were 10 issued expectations, did you not reinforce with the 11 staff that they needed to follow the chain of 12 command? 13 A I can't recall. 14 Q Well, that's important, isn't it, to make 15 sure that that -- 16 A Oh, I would think it would be important to 17 follow the chain of command, yes, but as far as 18 whether that was specifically ordered, I just don't 19 remember. 20 Q And in your observation, did Ms. Darby, 21 Ms. Lauder, Ms. Moreau, and Ms. Anderson attempt to 22 follow the change of -- chain of command and work it 23 out with Ms. Fisher? 24 A My perception was that they felt like they 25 did. I don't know -- wasn't there firsthand. I</p>	<p style="text-align: right;">91</p> <p>1 A Okay. I don't. I'm sorry. 2 Q -- if they followed the chain of command. 3 I'm not trying to put words in your mouth. 4 A Sure. 5 Q I was trying to give you a little latitude 6 on that one. 7 A I appreciate it. I need a lot of 8 latitude. Old, fat, and I forget more. 9 Q And so based on those three things, 10 the positive -- no positive changes, vacancy rate 11 remained the same or increased, I believe you said, 12 and then four nurses who had still -- still had 13 complaints might have -- not have or may have 14 followed the chain of command, and I believe 15 Assistant Nurse Managers Aguilar and Gossett both 16 left. 17 A Yes. 18 Q All right. So those four things. And I 19 missed one the first time. Those four things were 20 what occurred in the interim time period of the 21 meeting with the staff and the meeting with 22 Ms. Fisher and the decision to terminate her. 23 A I'm not sure -- 24 Q To demote her. Sorry. 25 A I'm not sure exactly where all that fell</p>
<p style="text-align: right;">90</p> <p>1 basically just dealt with their complaints. 2 Q You would have wanted to inquire about 3 that. That would be important; wouldn't it? 4 A I would want them to try that first. 5 Q And did you inquire of -- as to what 6 efforts they had made prior to coming to you to 7 complain? 8 A I don't remember. I just remember they 9 had a long list of complaints. 10 Q Okay. So there were no positive changes 11 that you had outlined in the expectations. Is that 12 correct? 13 A Not that I recall. 14 Q And the vacancy rates had remained high? 15 A I believe so. 16 Q And you had additional complaints that may 17 or may not have followed the chain of command. 18 A That's fair, I guess. 19 Q You said, "Yes"? 20 A That is fair, I guess. I -- I'm sorry. 21 My recollection, it's been a while. 22 Q Okay. Well, that's why I said may or may 23 not have. 24 A Yeah. 25 Q You don't recall --</p>	<p style="text-align: right;">92</p> <p>1 but, yes, as far as the -- I'm -- I believe that the 2 vacancy rate -- I'm -- I'm comfortable with that. 3 The complaints continued to come. I'm not sure 4 exactly where the meeting between the four -- or, 5 yeah, the four nurses -- in the time line, I'm not 6 clear on exactly where that happened. 7 Q Okay. But you did have a meeting with the 8 four nurses or you just had communication -- 9 A Four of them -- four of them wanted to 10 come and meet with me. Three of them showed up. 11 Anderson, I think it was. Anderson? I think she 12 had an appointment. Ms. Darby, Ms. Lauder, and I 13 think it was Ms. Moreau that showed up. 14 Q Okay. And you and Ms. Gotcher and 15 Ms. Melton had the opportunity to meet at least on 16 more than one occasion regarding Ms. Fisher during 17 this time period. 18 A Yes. 19 Q Did you and Ms. Gotcher and Ms. Melton 20 ever meet with Ms. Fisher to try to help her? 21 A I don't recall. There were a lot of 22 meetings, so I'm -- 23 Q But you don't know if you met -- 24 A I don't know. 25 Q You met about her, but did you meet with</p>

<p style="text-align: right;">93</p> <p>1 her?</p> <p>2 A I don't remember.</p> <p>3 Q Okay. So initially she was demoted to the</p> <p>4 Nurse Clinician III and then that -- that decision</p> <p>5 changed.</p> <p>6 A I don't -- I'm under the impression</p> <p>7 that -- that was never actually fulfilled. I</p> <p>8 thought she was just demoted to assistant nurse</p> <p>9 manager, so I'm a little confused about that.</p> <p>10 Q Okay. And so maybe it never took place</p> <p>11 that she received the demotion? She just received</p> <p>12 the intent to demote?</p> <p>13 A That's my understanding.</p> <p>14 Q Okay. And, again, during your tenure</p> <p>15 there, were there other nurse managers that you felt</p> <p>16 compelled to demote for various reasons?</p> <p>17 A Terminate and demote, as well.</p> <p>18 Q Okay. Anybody for vacancy rates and</p> <p>19 turnover rates?</p> <p>20 A Not that I recall.</p> <p>21 Q When Ms. Fisher was demoted -- and, again,</p> <p>22 do you have any -- sorry. Strike that. I jumped</p> <p>23 backward and I probably confused you because I</p> <p>24 confused me.</p> <p>25 Do you have any understanding of how</p>	<p style="text-align: right;">95</p> <p>1 A No, because I don't remember the time span</p> <p>2 and I don't know when she went out.</p> <p>3 Q Once she was demoted to assistant nurse --</p> <p>4 and that certainly carried with it a demotion in pay</p> <p>5 also; didn't it?</p> <p>6 A Yes.</p> <p>7 Q All right. Once she was demoted to that</p> <p>8 position, where did she go? Where was she placed?</p> <p>9 A I think it was the Wynne Unit. In fact,</p> <p>10 I'm almost certain it was.</p> <p>11 Q It was the Wynne Unit. And do you know --</p> <p>12 do you recall who her nurse manager was at that</p> <p>13 position?</p> <p>14 A Her immediate supervisor was Kim Roddy.</p> <p>15 Q Okay. And actually, Ms. Roddy did not</p> <p>16 stay in that position the entire time that</p> <p>17 Ms. Fisher was at Wynne Unit; did she?</p> <p>18 A She resigned and moved to Colorado but I</p> <p>19 don't know what -- exactly at what point in time</p> <p>20 that happened.</p> <p>21 Q And did Nurse Roddy have any letters of</p> <p>22 expectation in her file against her?</p> <p>23 A I don't think so.</p> <p>24 Q Okay. Any complaints about her?</p> <p>25 A Just as I had outlined previously, I would</p>
<p style="text-align: right;">94</p> <p>1 many days it was, actually days at work that</p> <p>2 Ms. Fisher might have had to make some improvements</p> <p>3 after she received this letter of expectation in</p> <p>4 front of all of her staff?</p> <p>5 A No, because I'm not sure when she went out</p> <p>6 on leave.</p> <p>7 Q But certainly y'all would have given her a</p> <p>8 fair opportunity to try to make those changes;</p> <p>9 wouldn't you have?</p> <p>10 A That would have been ideal but, I mean,</p> <p>11 she would have been the one to determine when she</p> <p>12 went out an leave, not us, and so --</p> <p>13 Q So it might have been her fault if she had</p> <p>14 took Family Medical Leave Act and didn't have a</p> <p>15 chance to be there?</p> <p>16 A No, no. That's not what I'm saying. I'm</p> <p>17 just saying that we didn't have any control on when</p> <p>18 she went out on leave, so I don't know if that makes</p> <p>19 sense or not.</p> <p>20 Q Well, you would have wanted her to have</p> <p>21 active time in her position to show you that she</p> <p>22 either could make those changes or could not.</p> <p>23 Wouldn't you have?</p> <p>24 A I would have, yes.</p> <p>25 Q Do you know if you permitted her that?</p>	<p style="text-align: right;">96</p> <p>1 occasionally get a complaint here and there, but I</p> <p>2 don't feel like I got a pattern of complaints.</p> <p>3 Q And actually, after Nurse Roddy left,</p> <p>4 Ms. Fisher was the only charge nurse there or the</p> <p>5 nurse in charge at the Wynne Unit; wasn't she?</p> <p>6 Ms. Roddy was not replaced as the nurse manager.</p> <p>7 A She would have been ultimately. I just</p> <p>8 don't recall who it was.</p> <p>9 Q Okay. But there was a time that there was</p> <p>10 no nurse manager, only Ms. Fisher as the assistant</p> <p>11 nurse manager, over the Wynne Unit after Ms. Roddy</p> <p>12 left. Isn't that correct?</p> <p>13 A I wouldn't characterize it that way.</p> <p>14 Carol Warren was the district person when Ms. Fisher</p> <p>15 was moved to the Wynne Unit and she went --</p> <p>16 Ms. Gotcher placed Ms. Fisher directly -- I won't</p> <p>17 say directly, but in her chain of command and so she</p> <p>18 would have had somebody to talk to, consult with,</p> <p>19 and so forth. And -- and, again, unfortunately I</p> <p>20 cannot remember, but I don't ever remember a case</p> <p>21 where we removed or where a nurse manager left that</p> <p>22 there wasn't some interim put in place to give</p> <p>23 support to the assistants. I don't know who that</p> <p>24 was but --</p> <p>25 MS. MILLER: Objection, move to</p>

<p style="text-align: right;">97</p> <p>1 strike as nonresponsive.</p> <p>2 Q (BY MS. MILLER) Okay. Mr. Watson, we've</p> <p>3 been getting along pretty well here, but if I ask</p> <p>4 you a specific question that's a "yes" or a "no --"</p> <p>5 A Oh.</p> <p>6 Q -- your attorney or your attorneys here</p> <p>7 will have the opportunity to clean up things the way</p> <p>8 you'd like to present them. But I would appreciate</p> <p>9 it if you and I can agree that if you'll answer my</p> <p>10 questions and then you'll get a chance to answer</p> <p>11 theirs.</p> <p>12 A I'll try to do better.</p> <p>13 Q Okay. Thank you.</p> <p>14 After Ms. Roddy left, there was no</p> <p>15 nurse manager at the Wynne Unit for a period of</p> <p>16 time. Isn't that correct?</p> <p>17 A I honestly don't know.</p> <p>18 Q Well, when she was first sent to the Wynne</p> <p>19 Unit, Ms. Fisher reported to Nurse Roddy; didn't</p> <p>20 she?</p> <p>21 A Yes.</p> <p>22 Q Okay. And after she -- after Nurse Roddy</p> <p>23 left, Ms. Fisher reported directly to Nurse Warren.</p> <p>24 Is that correct?</p> <p>25 A Perhaps. I --</p>	<p style="text-align: right;">99</p> <p>1 A I'm not sure. The -- once -- once a</p> <p>2 disciplinary action has taken place, it is</p> <p>3 traditional that it will extend for approximately 12</p> <p>4 calendar months from that point forward, so that is</p> <p>5 possible.</p> <p>6 Q Okay. So that demotion was a disciplinary</p> <p>7 action?</p> <p>8 A Yes.</p> <p>9 Q Okay. Did you use any less harsh or less</p> <p>10 intense disciplinary actions prior to the demotion?</p> <p>11 A No.</p> <p>12 Q Isn't it true that UTMB and TDCJ have</p> <p>13 progressive discipline policies where you don't</p> <p>14 start out with the harshest of disciplinary actions?</p> <p>15 A There is -- those are options. However,</p> <p>16 each of the situations is dealt with --</p> <p>17 Q Is that correct?</p> <p>18 A Yes.</p> <p>19 Q Thank you.</p> <p>20 A Sorry.</p> <p>21 Q And that's a written policy?</p> <p>22 A It's a guideline. I don't -- I'm not sure</p> <p>23 if it's a policy or not. I mean, it's probably</p> <p>24 contained in a policy. I'm just saying I'm not sure</p> <p>25 there's -- I'm not familiar with anything that says</p>
<p style="text-align: right;">98</p> <p>1 Q Don't recall?</p> <p>2 A I'm sorry.</p> <p>3 Q Well, do you recall what Ms. Warren's</p> <p>4 position was?</p> <p>5 A Oh, yeah. She was a cluster nurse</p> <p>6 manager, as I was.</p> <p>7 Q All right. And as you were.</p> <p>8 A I was a cluster -- senior cluster nurse --</p> <p>9 Q Okay.</p> <p>10 A She was also a senior cluster nurse</p> <p>11 manager.</p> <p>12 Q So she was your peer, not your --</p> <p>13 A Correct.</p> <p>14 Q Okay. And what locations did Nurse Warren</p> <p>15 have responsibilities for as the cluster nurse</p> <p>16 manager?</p> <p>17 A Whatever she was responsible for in the</p> <p>18 Palestine area, specifically Ms. Fisher.</p> <p>19 Q Okay. And you still had the Huntsville</p> <p>20 area.</p> <p>21 A Yes.</p> <p>22 Q Okay. Now, while Ms. Fisher was on -- was</p> <p>23 being -- was demoted during that time period, she</p> <p>24 was removed from eligibility for merit increases.</p> <p>25 Is that correct?</p>	<p style="text-align: right;">100</p> <p>1 you have to follow step by step by step. It's an</p> <p>2 option.</p> <p>3 Q Okay.</p> <p>4 A I have a feeling I'm going to need my</p> <p>5 glasses.</p> <p>6 (Exhibit 1 marked)</p> <p>7 Q You're going to need your glasses.</p> <p>8 A Okay.</p> <p>9 Q And you're going to need to take a minute</p> <p>10 and review this. I'm going to show you what's been</p> <p>11 marked as Exhibit Number 1 for your deposition and</p> <p>12 represent to you that this is a written recording of</p> <p>13 your interview with the EEOC investigator and I want</p> <p>14 to make sure -- because he's putting down what he</p> <p>15 heard you say.</p> <p>16 A No, that's not correct. We never met face</p> <p>17 to face. We never conversed on the phone.</p> <p>18 Q So this is from your written</p> <p>19 correspondence?</p> <p>20 A That's correct.</p> <p>21 Q Okay. So -- well, good. That makes it --</p> <p>22 so take a look at this document, and if this is the</p> <p>23 written correspondence that you provided, then that</p> <p>24 makes it easier for you to say that, "Yes, indeed I</p> <p>25 concur with this." That's what I'm looking. I'm</p>

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<p>1 looking to see if there are any -- is there anything 2 in here that would be characterized as your response 3 that, at this point, you would choose to change or 4 identify as not being correct? 5 MR. LIVELY: Did you -- did you type 6 this out? 7 THE WITNESS: Yeah. 8 MR. LIVELY: Okay. He did. 9 THE WITNESS: Is there a problem? 10 MS. BERNSTEIN: No. I'm just 11 trying -- I was confused. 12 Q (BY MS. MILLER) He's trying to understand 13 where it came from. I misunderstood it also, so -- 14 A She -- he sent me an e-mail and with 15 these -- I believe it was an e-mail with these 16 questions and I responded -- 17 Q Great. Okay. 18 A -- to these questions. 19 Q Fine. Just make sure it's correct and 20 accurate and you can ignore the writing on the side. 21 MR. LIVELY: So the heavier print was 22 the question? 23 THE WITNESS: That's correct. 24 Q (BY MS. MILLER) The italics bold is the 25 question from the investigator and then the regular</p>	<p>1 correct. 2 (Exhibit 2 marked) 3 Q (BY MS. MILLER) Okay. I'm going to show 4 you what's been marked as Exhibit Number 2. Exhibit 5 Number 2. 6 A Okay. 7 Q And ask you to take a minute and read 8 through that. 9 MR. LIVELY: Is this something you 10 prepared? 11 THE WITNESS: I didn't read it. 12 MS. MILLER: I get to ask the 13 questions, Sam. 14 MR. LIVELY: Oh, I'm just trying 15 to -- 16 THE WITNESS: Good Lord, I wrote all 17 this? 18 Q (BY MS. MILLER) Well, that's what I'd 19 like to know. 20 A Yeah. Well, I'll require a moment to look 21 through it. 22 Q Okay. Let's take a minute and look at it. 23 (Pause from 12:43 to 1:05 while 24 witness reviews exhibit) 25 Q (BY MS. MILLER) Can I interrupt just for</p>
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<p>1 Times Roman is how you responded. Is that correct? 2 A That is correct. 3 Q Thank you. 4 MR. LIVELY: All right. Did you want 5 to mark it? 6 MS. MILLER: I did. 1. 7 MR. LIVELY: Oh, okay. 8 Q (BY MS. MILLER) Okay. And with the 9 exception of the handwritten notes, which apparently 10 are from the investigator, is that a true and 11 accurate copy of what you presented to him during 12 the EEOC investigation? 13 A It seems to be, yes. 14 Q Okay. And if you'd like more time to 15 review it, I'll be happy to get you some more -- 16 give you some more time. 17 A Well, I mean, it's 20 pages. That could 18 take a while. Is there -- do you want to go through 19 like section by section? 20 Q I'm not going to question you about -- I 21 just want to -- 22 A Oh. 23 Q -- know if I can rely on your answers as 24 you represented them to the EEOC. 25 A To the best of my recollection, this is</p>	<p>1 a sec, Mr. Watson? I mean, I don't want to take any 2 more time if you're going to say you didn't write 3 this but -- 4 A No. I -- 5 Q You did write it. 6 A I believe so, yeah. 7 Q Okay. All right. Thank you. Keep going. 8 I want you to look at it. 9 A Oh, okay. 10 Q Yes. Yes. I just didn't -- 11 A I just don't remember -- 12 Q If you were going to say -- 13 A No. I just -- 14 Q -- "I have no idea where this came from, 15 this isn't mine" -- 16 MR. LIVELY: Exhibit 2? 17 MS. MILLER: Exhibit 2. Correct. 18 MS. BERNSTEIN: I'm sorry. Was 19 Exhibit 1 admitted? 20 MS. MILLER: Yes. Well, it's not 21 admitted. We're not in a trial. 22 MS. BERNSTEIN: I mean, not -- but 23 Exhibit 1 was attached to the -- 24 MR. LIVELY: Yeah, it was attached. 25 MS. MILLER: Is it offered as a</p>

<p style="text-align: right;">105</p> <p>1 deposition exhibit?</p> <p>2 MS. BERNSTEIN: Right.</p> <p>3 MS. MILLER: Yes. Yes.</p> <p>4 MR. LIVELY: But not the handwriting</p> <p>5 because we don't know whose handwriting that is.</p> <p>6 It's not yours; is it?</p> <p>7 MS. MILLER: It's Ray Batista's but</p> <p>8 we'll take that off. We're going to go with that</p> <p>9 for now. But we'll take that off for -- if we use</p> <p>10 it. I just am trying to get the facts. I thought</p> <p>11 it might be faster than a deposition.</p> <p>12 MR. LIVELY: No. I understand.</p> <p>13 MS. BERNSTEIN: Sam, can I have a</p> <p>14 second?</p> <p>15 MR. LIVELY: Sure.</p> <p>16 (Ms. Bernstein and Mr. Lively leave</p> <p>17 the deposition room)</p> <p>18 THE WITNESS: I'm sorry. I'm not a</p> <p>19 fast reader.</p> <p>20 MS. MILLER: That's okay. I want you</p> <p>21 to read it. I want you to take your time. I've got</p> <p>22 all day.</p> <p>23 (Ms. Bernstein and Mr. Lively return</p> <p>24 to the deposition room)</p> <p>25 MR. LIVELY: Just for the record, we</p>	<p style="text-align: right;">107</p> <p>1 MS. MILLER: I'm teasing. I said</p> <p>2 there you go again with demands.</p> <p>3 MS. BERNSTEIN: We said earlier</p> <p>4 nobody in the room was shy.</p> <p>5 MS. MILLER: Right.</p> <p>6 (Discussion off the record</p> <p>7 from 1:19 to 1:27)</p> <p>8 Q (BY MS. MILLER) You've had a chance,</p> <p>9 Mr. Watson, in fact, taken quite a bit of time,</p> <p>10 which we're more than happy to allow you, to review</p> <p>11 Exhibit Number 2, and is this a document that</p> <p>12 you wrote?</p> <p>13 A Yes. But I can't remember when, how, or</p> <p>14 why.</p> <p>15 Q Okay.</p> <p>16 A But I did -- I do recognize it as mine.</p> <p>17 Q As your writing. Because it's not signed</p> <p>18 and it's not dated.</p> <p>19 A Um-hmm.</p> <p>20 Q But apparently it is, at some point in</p> <p>21 time, looking back on the events that form part of</p> <p>22 this lawsuit.</p> <p>23 A Correct. Yes.</p> <p>24 Q And certainly it was written at a time</p> <p>25 that's closer in time to the actual events than</p>
<p style="text-align: right;">106</p> <p>1 don't know whose handwriting is on the --</p> <p>2 MS. MILLER: We'll take the</p> <p>3 handwriting off. That's fine.</p> <p>4 MR. LIVELY: Okay. Yeah, because --</p> <p>5 MS. MILLER: And he didn't verify it.</p> <p>6 MR. LIVELY: Some of it looks like --</p> <p>7 there may be two people.</p> <p>8 MS. MILLER: Okay.</p> <p>9 MR. LIVELY: Some of the</p> <p>10 handwriting --</p> <p>11 MS. MILLER: Yeah. I didn't ask him</p> <p>12 to verify the handwriting. We'll make that clear.</p> <p>13 I'm sorry if I didn't --</p> <p>14 MR. LIVELY: Yeah.</p> <p>15 MS. MILLER: That's on Exhibit 1 that</p> <p>16 Mr. Lively is concerned, and didn't ask any</p> <p>17 verification on the handwriting. We don't know</p> <p>18 whose it is. I agree. No problem. There's no</p> <p>19 handwriting on 2.</p> <p>20 MS. BERNSTEIN: No. I just want to</p> <p>21 see what it is.</p> <p>22 MR. LIVELY: Oh, I'm sorry.</p> <p>23 MS. MILLER: There you go again with</p> <p>24 demands.</p> <p>25 MS. BERNSTEIN: I'm sorry.</p>	<p style="text-align: right;">108</p> <p>1 today.</p> <p>2 A Yes.</p> <p>3 Q And it was written at a time that your</p> <p>4 memory probably was a little better --</p> <p>5 A That wouldn't take much, but yes.</p> <p>6 Q -- than it might be today.</p> <p>7 A Yes. I agree.</p> <p>8 Q Okay. Anything that you want to correct</p> <p>9 in that statement specifically that, as you look</p> <p>10 back, you think, "Oh, my gosh, I don't think that's</p> <p>11 quite right"?</p> <p>12 MR. LIVELY: On Exhibit 2?</p> <p>13 Q (BY MS. MILLER) On Exhibit Number 2?</p> <p>14 A I didn't see anything that jumped out at</p> <p>15 me as glaringly.</p> <p>16 Q Okay.</p> <p>17 A Now, the pages were a little out of order,</p> <p>18 so it was a little confusing, but I think it's still</p> <p>19 a fair representation of my feelings.</p> <p>20 Q Okay. And maybe I asked you this, but do</p> <p>21 you know why you wrote this?</p> <p>22 A I don't remember.</p> <p>23 Q Okay. If it was -- if I represent to you</p> <p>24 that it was among the documents provided by the</p> <p>25 EEOC, it might have been something you tendered to</p>

<p style="text-align: right;">109</p> <p>1 UTMB that they tendered to --</p> <p>2 A Could very well have been.</p> <p>3 Q -- the EEOC?</p> <p>4 A Yeah. See, I never talked or met with any</p> <p>5 of the EEOC people directly.</p> <p>6 Q Okay. And without telling me what you</p> <p>7 talked about, you did have an opportunity to meet</p> <p>8 with UTMB personnel regarding the EEOC charge; did</p> <p>9 you not?</p> <p>10 A No.</p> <p>11 Q You did not.</p> <p>12 A If you're asking me, did I have a chance</p> <p>13 to meet with the EEOC person?</p> <p>14 Q No.</p> <p>15 A Oh.</p> <p>16 Q Did you have a chance to meet with UTMB</p> <p>17 attorneys or representatives in -- as they formed a</p> <p>18 response to the EEOC charge?</p> <p>19 A I don't recall meeting with the -- with</p> <p>20 the attorneys, and actually, I don't remember who I</p> <p>21 met with at --</p> <p>22 Q There was an EEO investigator, Mr. Melvin?</p> <p>23 A Williams, yes.</p> <p>24 Q Mr. Williams? Melvin Williams?</p> <p>25 A Um-hmm.</p>	<p style="text-align: right;">111</p> <p>1 have been an earlier representation than after it</p> <p>2 went through the channels of the EEOC, the federal</p> <p>3 investigation.</p> <p>4 A I think so, yeah.</p> <p>5 Q Okay. Thank you. You indicated that some</p> <p>6 of the conclusions you had drawn were the lack of</p> <p>7 appropriate communication skills and effective</p> <p>8 leadership, racism, preferential treatment. Can you</p> <p>9 give me examples that were complained about as far</p> <p>10 as Mrs. Fisher exhibiting racism in her -- in her</p> <p>11 performance?</p> <p>12 A No. Those were not observations I made</p> <p>13 personally. Those were observations that were</p> <p>14 reported to me by third parties.</p> <p>15 Q Okay. And the third parties, did they</p> <p>16 have examples?</p> <p>17 A I'm sure they did at the time but I can't</p> <p>18 recall them.</p> <p>19 Q Okay. And how -- and favoritism? Did</p> <p>20 they have examples of favoritism?</p> <p>21 A One of the examples that I recall -- and I</p> <p>22 can't tell you precisely who, where; it just sticks</p> <p>23 in my mind -- is that Ms. Freeman was allowed to do</p> <p>24 things and Ms. Freeman had allegedly said -- and,</p> <p>25 again, I never personally heard this -- in the</p>
<p style="text-align: right;">110</p> <p>1 Q Do you recall meeting with him?</p> <p>2 A No.</p> <p>3 Q All right. One of the --</p> <p>4 A I was going to say, I can say</p> <p>5 categorically I did not meet with him, or at least</p> <p>6 we never discussed --</p> <p>7 Q Okay. And categorically you did not meet</p> <p>8 face to face or speak on the phone with the EEOC</p> <p>9 investigator.</p> <p>10 A Federal?</p> <p>11 Q Federal.</p> <p>12 A No.</p> <p>13 Q Okay. But Exhibit Number 1 does represent</p> <p>14 your correspondence with him.</p> <p>15 A With Williams, not the federal.</p> <p>16 Q With Williams.</p> <p>17 A Yes. Internal.</p> <p>18 Q Oh. I'm glad you clarified that. So</p> <p>19 Exhibit Number 1 was not the federal agency but the</p> <p>20 internal EEO investigator --</p> <p>21 A That is correct.</p> <p>22 Q -- for UTMB.</p> <p>23 A Yes.</p> <p>24 Q Thank you. That does clear up something.</p> <p>25 So at least, you know, we can say in time it might</p>	<p style="text-align: right;">112</p> <p>1 absence of Ms. Fisher that they were friends and</p> <p>2 alluded to the fact that she had the ability to</p> <p>3 pretty much act the way she wanted to. And I had</p> <p>4 discussed with this with Ms. Fisher and she just</p> <p>5 didn't feel like Ms. Freeman would do that, but I</p> <p>6 kept getting the reports and getting them and</p> <p>7 getting them.</p> <p>8 Q And Ms. Freeman, that's Patricia Freeman?</p> <p>9 A Yes.</p> <p>10 Q Okay. I'm going to show you some shorter</p> <p>11 documents.</p> <p>12 A Thank goodness.</p> <p>13 (Exhibit 3 marked)</p> <p>14 Q (BY MS. MILLER) I show you what's been</p> <p>15 marked as Exhibit Number 3.</p> <p>16 A May I?</p> <p>17 Q Please. Take a look at that. And the</p> <p>18 date on this is December 10th, 2004. It indicates</p> <p>19 that you're the one that generated this document to</p> <p>20 Jackie Fisher.</p> <p>21 A Okay.</p> <p>22 Q Is that correct?</p> <p>23 A Yes.</p> <p>24 Q And do you recognize this document?</p> <p>25 A Just give me one moment to peruse it.</p>

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<p>1 Q Sure.</p> <p>2 A Yes, ma'am.</p> <p>3 Q And this was a document that you had</p> <p>4 written as an interim evaluation to the quarterly</p> <p>5 evaluation to her annual performance review?</p> <p>6 A I believe that's --</p> <p>7 Q Is that correct?</p> <p>8 A I believe that's correct.</p> <p>9 Q And at this point in time, at least as of</p> <p>10 December 10th of 2004, you would have to admit that</p> <p>11 your remarks concerning Ms. Fisher and her</p> <p>12 management and her management achievements are</p> <p>13 pretty positive.</p> <p>14 A Generally speaking. Also, I do note the</p> <p>15 fact that here in 2004 the -- in the one, two --</p> <p>16 third paragraph down, she "continues to be</p> <p>17 challenged with social/professional dynamics of some</p> <p>18 providers and management staff at various</p> <p>19 locations."</p> <p>20 MS. MILLER: Move to strike as</p> <p>21 nonresponsive. Objection.</p> <p>22 Q (BY MS. MILLER) You'd have to agree that</p> <p>23 overall on December 10th in 2004, your evaluation of</p> <p>24 Ms. Fisher was overall positive.</p> <p>25 A Overall positive.</p>	<p>1 characterize a written warning would be just that,</p> <p>2 yeah. But I suppose --</p> <p>3 Q It would have a different tone or it would</p> <p>4 have a different title?</p> <p>5 A I would think. I would think.</p> <p>6 Q And by this, you're talking about the</p> <p>7 suicide of the gentleman, the inmate that hung</p> <p>8 himself.</p> <p>9 A Yes. And this is the one I was talking to</p> <p>10 you about earlier. I see what you're talking about</p> <p>11 now in the first paragraph, says, "This is letter of</p> <p>12 expectation that is intended to clarify some of</p> <p>13 those issues for future reference. This is not a</p> <p>14 written warning." That's the one I wanted to put</p> <p>15 into the file to hopefully make sure that TDC didn't</p> <p>16 come back and press for something more aggressive.</p> <p>17 Q Okay. And, in fact, you reviewed this</p> <p>18 with Ms. Fisher and she approved it on the second</p> <p>19 page of Exhibit Number 4. Correct?</p> <p>20 A I believe so, yes.</p> <p>21 (Exhibit 5 marked)</p> <p>22 Q (BY MS. MILLER) All right. We had these</p> <p>23 in order but a little out of -- going backward a</p> <p>24 little bit. I'm going to show you Exhibit Number 5.</p> <p>25 MR. LIVELY: 5? Did you say 5?</p>
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<p>1 MR. LIVELY: Which number was that?</p> <p>2 Number 4?</p> <p>3 MS. MILLER: That was 3. 4.</p> <p>4 (Exhibit 4 marked)</p> <p>5 Q (BY MS. MILLER) I'm going to show you</p> <p>6 Exhibit Number 4.</p> <p>7 A Okay.</p> <p>8 Q Do you recognize this document? Take a</p> <p>9 minute to look at it.</p> <p>10 A Yes. I had forgotten this document but I</p> <p>11 remember it now.</p> <p>12 Q Okay. And this was a letter of</p> <p>13 expectation issued on September 17th of 2004 to</p> <p>14 Ms. Fisher.</p> <p>15 A Um-hmm.</p> <p>16 Q Correct?</p> <p>17 A Yes.</p> <p>18 Q And do you recall the incident or the</p> <p>19 situation that precipitated this letter of</p> <p>20 expectation?</p> <p>21 A I think this was the suicide.</p> <p>22 Q And in this, you've indicated, "This is</p> <p>23 not a written warning." Are letters of expectations</p> <p>24 sometimes written warnings.</p> <p>25 A I don't think so. I believe I would</p>	<p>1 MS. FISHER: The number is falling</p> <p>2 off.</p> <p>3 MS. MILLER: Oh, the number is</p> <p>4 falling off. Just rub it harder. There you go.</p> <p>5 Thank you.</p> <p>6 Q (BY MS. MILLER) And Exhibit Number 5 is</p> <p>7 identified as the December?</p> <p>8 A 1, 2003.</p> <p>9 Q Okay.</p> <p>10 MR. LIVELY: There's something --</p> <p>11 MS. MILLER: There's something</p> <p>12 attached that we need to pull off. It's just a</p> <p>13 one-page document.</p> <p>14 THE WITNESS: Then I'll let you.</p> <p>15 MS. MILLER: I'll do it. Sorry.</p> <p>16 MR. LIVELY: Okay. Good.</p> <p>17 THE WITNESS: Is this it?</p> <p>18 MS. MILLER: Yes.</p> <p>19 THE WITNESS: Okay.</p> <p>20 MS. MILLER: Exhibit Number 5.</p> <p>21 MR. LIVELY: Well, wait a minute.</p> <p>22 There's two pages, I think.</p> <p>23 MS. MILLER: I pulled them both off.</p> <p>24 MR. LIVELY: Is there just one?</p> <p>25 MS. MILLER: It's just one page.</p>

<p style="text-align: right;">117</p> <p>1 THE WITNESS: Oh, this is 1 of 1. 2 Yeah, I see at the bottom. 3 MS. MILLER: 1 of 1. 4 THE WITNESS: Okay. 5 MS. MILLER: My photo copiers got 6 mixed up or maybe I did. 7 Q (BY MS. MILLER) But, anyway, do you 8 recognize this document? 9 A Um-hmm. 10 Q And this is December 1st of 2003, another 11 quarterly exam of Ms. Fisher or evaluation for 12 Ms. Fisher as -- she's fairly new cluster nurse 13 manager. Correct? 14 A Yes. 15 Q And, again, at least when she started out, 16 her evaluations and her reviews have pretty positive 17 things to say; don't they? 18 A I concur. 19 (Exhibit 6 marked) 20 Q (BY MS. MILLER) I'm going to show you 21 what's been marked as Exhibit Number 6. 22 A Okay. 23 Q If you'd take a look at the second page of 24 Exhibit Number 6, which is page 844, is that your 25 signature at the bottom?</p>	<p style="text-align: right;">119</p> <p>1 (Exhibit 8 marked) 2 Q (BY MS. MILLER) I show you what's been 3 marked as Exhibit Number 8, and review that 4 document, if you would, please. 5 A Um-hmm. 6 Q And what do you recognize Exhibit Number 8 7 to be? 8 A I think it was from the interview with 9 Ms. Fisher, record -- written record of the results 10 of the interview when she applied for the cluster 11 nurse manager position. 12 Q And this is -- is this your writing on the 13 front page? 14 A Yes. 15 Q And front page being page number 850 of 16 Exhibit Number 8? 17 A Um-hmm. 18 Q And is this your writing on the second 19 page, being 851 of Exhibit Number 8? 20 A Yes. 21 Q And your signature? 22 A Yes. 23 Q Okay. And do you recognize the writing on 24 page 852 or -3. 25 A No, I don't.</p>
<p style="text-align: right;">118</p> <p>1 A Yes, it is. 2 Q And this represents the salary increase 3 that Ms. Fisher received when she was initially 4 promoted from the assistant nurse manager to the 5 cluster nurse manager position. Correct? 6 A I believe so. 7 MR. LIVELY: That was 6? 8 MS. MILLER: 6. 9 (Exhibit 7 marked) 10 Q (BY MS. MILLER) Exhibit Number 7. 11 Recognize this document? 12 A Yes. 13 Q And what does this represent? 14 A It's kind of a little unofficial atta boy, 15 Gem Cards for going the extra mile when we have an 16 opportunity to take a moment to recognize staff that 17 are doing a good job. 18 Q And, in fact, Ms. Fisher is pretty much 19 known for going that extra mile; isn't she? 20 A That's a fair assessment. 21 Q She's a hard worker. 22 A She's a hard worker. 23 Q Has the interest of the UTMB facilities at 24 heart? 25 A Yes.</p>	<p style="text-align: right;">120</p> <p>1 Q But it would have been from the other 2 people that interviewed also along with you? 3 A Yes. 4 (Exhibit 9 marked) 5 Q (BY MS. MILLER) I'm going to show you 6 what's been marked as Exhibit Number 9. Look at 7 that, if you would, please. And is this also, 8 Exhibit Number 9, part of the hire packet, if you 9 will, when she was hired as a cluster nurse? 10 A I suppose. A lot of this stuff they just 11 stuck in front of my face and said, "You need to 12 sign it," and I did, so -- 13 Q But page 886 is a UTMB Managed Transfer 14 Request from Ms. Fisher, asking to be transferred 15 from -- actually, from assistant nurse manager 16 from -- to Wynne? 17 A I need a moment to just -- this is from 18 '02. I don't think I even came to that area until 19 '03 or so. I'm not sure. 20 Q Okay. 21 A It's not ringing any bells with me. Is 22 there something I should focus on? 23 Q Yeah. You know what? I'm going to 24 withdraw this exhibit because it's confused. 25 A I didn't know if I was --</p>

<p style="text-align: right;">121</p> <p>1 Q I thought it --</p> <p>2 A Yeah. I'm -- I thought I was missing --</p> <p>3 Q I thought it was all the same issue.</p> <p>4 A I'm sorry. I thought I was missing</p> <p>5 something.</p> <p>6 MS. MILLER: Yeah. That's fine. I'm</p> <p>7 withdrawing Exhibit Number 9.</p> <p>8 MR. LIVELY: Okay.</p> <p>9 MS. MILLER: It's got too many things</p> <p>10 going on.</p> <p>11 (Exhibit 9 withdrawn)</p> <p>12 (Exhibit 10 marked)</p> <p>13 Q (BY MS. MILLER) I'm going to show you</p> <p>14 what's been marked as Exhibit Number 10, and if you</p> <p>15 would take a minute and look at this document,</p> <p>16 please. Do you recognize this document?</p> <p>17 A Not right off.</p> <p>18 Q Okay.</p> <p>19 A If I can have a moment to just make sure.</p> <p>20 Okay. Do you have a specific question?</p> <p>21 Q Do you recognize this document?</p> <p>22 A Never seen it before.</p> <p>23 Q Okay. Thank you.</p> <p>24 (Exhibit 11 marked)</p> <p>25 Q (BY MS. MILLER) I'm going to show you</p>	<p style="text-align: right;">123</p> <p>1 of '05 --</p> <p>2 A My assess -- my assessment would be that,</p> <p>3 yes, that was correct. It would -- it would reflect</p> <p>4 back on the previous 12 months.</p> <p>5 Q And when you did this, it was an accurate</p> <p>6 assessment of her performance at that time.</p> <p>7 A As accurate as I could make it, yes.</p> <p>8 MR. LIVELY: And we can have the same</p> <p>9 agreement on the underlining?</p> <p>10 MS. MILLER: Yes.</p> <p>11 MR. LIVELY: If Ms. Fisher can --</p> <p>12 MS. MILLER: Well, we'll do it for</p> <p>13 trial.</p> <p>14 Q (BY MS. MILLER) But I'm not asking if</p> <p>15 you're representing anything other than your</p> <p>16 signature and the typewritten portions that are</p> <p>17 apparently --</p> <p>18 A Yes. I'm okay with that.</p> <p>19 (Exhibit 12 marked)</p> <p>20 Q (BY MS. MILLER) All right. I'm going to</p> <p>21 show you what's been marked as Exhibit Number 12.</p> <p>22 Do you recognize this document?</p> <p>23 A I recognize it as something I probably</p> <p>24 wrote but I can't remember the specifics of what I'm</p> <p>25 talking about here.</p>
<p style="text-align: right;">122</p> <p>1 what's been marked as 11. And I'm going to ask you</p> <p>2 if you recognize that document.</p> <p>3 A It's an employee -- I think it's an annual</p> <p>4 evaluation for Ms. Fisher.</p> <p>5 Q Of Ms. Fisher? And at -- turn your</p> <p>6 attention to page number 82 of Exhibit Number 11.</p> <p>7 A Okay.</p> <p>8 Q And that's your signature on the page</p> <p>9 there as supervisor?</p> <p>10 A Yes.</p> <p>11 Q And dated 7/8 of '05.</p> <p>12 A Yes.</p> <p>13 Q Okay. And back to the front page, which</p> <p>14 is page 77 of Exhibit Number 11 --</p> <p>15 A Um-hmm.</p> <p>16 Q -- the PMP date there is 6/25/04. What</p> <p>17 significance is that?</p> <p>18 A I do not know. I don't know why there</p> <p>19 would be such a difference or if this was --</p> <p>20 actually, I don't even know what "PMP" means, so --</p> <p>21 Q Okay. But this essentially would have</p> <p>22 been an evaluation from -- an annual evaluation from</p> <p>23 July of '05 and subsequent months. Right?</p> <p>24 A I'm sorry. Come again.</p> <p>25 Q It would be -- working backward from July</p>	<p style="text-align: right;">124</p> <p>1 Q And you can't remember the incident that</p> <p>2 it --</p> <p>3 A No, I don't.</p> <p>4 Q -- relates to? Well, was it often that</p> <p>5 employees came to you about things they weren't</p> <p>6 happy with?</p> <p>7 A No. I don't think it was often.</p> <p>8 Q Were the -- did you encourage it?</p> <p>9 A I had an open-door policy, but if somebody</p> <p>10 came to me with a problem, I would ask them, "Have</p> <p>11 you tried to resolve this with your supervisor?"</p> <p>12 And if the answer was "No," then I would say, "Well,</p> <p>13 you need to go try that first, and if that doesn't</p> <p>14 work, then we can talk later."</p> <p>15 (Exhibit 13 marked)</p> <p>16 Q (BY MS. MILLER) I'm going to show you</p> <p>17 what's been marked as Exhibit Number 13.</p> <p>18 MR. LIVELY: What was that?</p> <p>19 MS. MILLER: That was 12 before.</p> <p>20 Q (BY MS. MILLER) Would you take a minute</p> <p>21 to look at this document?</p> <p>22 A I recognize it.</p> <p>23 Q Okay. And this document, was this one you</p> <p>24 generated?</p> <p>25 A It was generated in a combination between</p>

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<p>1 myself and Ms. Freeman, going back and forth. 2 Q Okay. And this was when she asked for the 3 transfer that you denied her. 4 A Correct. 5 Q Is that correct? Okay. And is this an 6 accurate representation of that communication back 7 and forth between you and Ms. Freeman? 8 A I think so. 9 (Exhibit 14 marked) 10 THE WITNESS: You going to have 11 enough of those? 12 MS. MILLER: I don't know. It 13 depends on Lorri. She's in charge of the stickers. 14 Q (BY MS. MILLER) Show you what's been 15 marked as Exhibit Number 14, and do you recognize 16 this document? 17 A This was also one of several that went 18 back and forth between Ms. Freeman and I. 19 Q During that exchange about her transfer. 20 A Yes. 21 Q Okay. 22 MR. LIVELY: What number? 14? 23 THE WITNESS: 14. 24 (Exhibit 15 marked) 25 Q (BY MS. MILLER) Show you what's been marked</p>	<p>1 Q Okay. So that -- this would have been a 2 facility-level -- 3 A I think so. 4 Q -- investigation into the death of an 5 inmate. 6 A It appears to be, yes. 7 Q And now do you -- recalling the incident a 8 little bit better, do you recall whether or not in 9 any way Ms. Fisher was involved or alleged to have 10 anything to do with this inmate's death? 11 A I don't recall one way or the other. 12 Q But it certainly didn't indicate it on the 13 Death Summary. 14 A I didn't see anything. 15 MS. MILLER: This has some printing 16 on it too. 17 MR. LIVELY: Okay. 18 MS. MILLER: I'll just strike it out. 19 Is that okay? 20 MR. LIVELY: Yeah. What's ESRD? 21 THE WITNESS: End-stage renal 22 disease. 23 MS. MILLER: What? Oh. 24 THE WITNESS: End-stage renal 25 disease.</p>
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<p>1 as Exhibit Number 15 and -- 2 A Okay. Let's see. 3 Q The offender's name is scratched out, but 4 do you recognize the instance? 5 A I just need a moment. 6 Q Sure. 7 MR. LIVELY: What number? 8 THE WITNESS: 15. 9 MS. MILLER: 15. 10 A This -- this kind of tickles my memory 11 about what you asked me about the drowning in the 12 bathtub earlier. 13 Q (BY MS. MILLER) Um-hmm. 14 A But honestly, I don't have a detailed 15 recollection of it. 16 Q Where -- the Death Summary, what would -- 17 who would generate that or how would that be 18 generated? 19 A I think, if this was the facility level, 20 it was probably generated through someone in 21 management. I don't remember exactly who wrote 22 these, to be honest. I just don't remember exactly. 23 Q Where it says "Reviewer: Aguilar," would 24 that have been Mr. Aguilar that prepared this, then? 25 A Ah. Probably so.</p>	<p>1 MR. LIVELY: What's IDBM? 2 THE WITNESS: Insulin-dependent 3 diabetes mellitus. 4 MR. LIVELY: HTN? 5 MS. BERNSTEIN: Hypertension. 6 (Exhibit 16 marked) 7 Q (BY MS. MILLER) Okay. I'm going to show 8 you what's been marked as Exhibit Number 16 and 9 there was some writing on that. I don't expect you 10 to identify that and, if you would, please just 11 ignore that. 12 MR. LIVELY: 16? 13 MS. MILLER: Yes. 14 A Yes. 15 Q (BY MS. MILLER) Okay. Tell me what 16 happened -- you recognize this document? 17 A I don't remember it but I'm -- I mean, 18 that's clearly from me. I have no issue with that. 19 Q And to Mary Gotcher and Ms. Rader and 20 Ms. Melton? 21 A Um-hmm. 22 Q And do you recall the instance which 23 precipitated you writing this memorandum? 24 A I do not. I remember -- one of the people 25 that sticks out in my mind that brought me some</p>

<p style="text-align: right;">129</p> <p>1 information and that's this, on first line, "several 2 little birds." I don't remember who those were, but 3 I do remember receiving information. I'm pretty 4 sure it was -- give me just a moment. 5 Ms. McCartney, I think, whoever -- who brought this 6 to my attention but I had heard it from more than 7 one source. I just can't remember the others. 8 Q And is this the visit that you were 9 talking about where the four of them -- or three of 10 them came, actually, to visit you? 11 A Not sure. It could have been but I'm 12 not -- I'm not remembering. 13 Q Okay. And as a habit, you certainly 14 documented everything; didn't you? 15 A I tried. 16 Q Okay. 17 A But I don't recall everything I 18 documented, either. 19 Q Sure. But, I mean, just in what we've 20 seen generated today, you put things down in fairly 21 good detail. 22 A I made efforts to do so, but you know what 23 I found out? It's never enough when you go to 24 court. You never remember it all. 25 Q Okay. Is that a "yes"?</p>	<p style="text-align: right;">131</p> <p>1 MR. LIVELY: 17? 2 Q (BY MS. MILLER) 17. I'm getting tired. 3 A Yeah, me too. Let me think. Not 4 definitively, but I'm leaning towards this was 5 before. 6 Q Okay. And on 1/10, it indicates you met 7 with Nancy Lauder, Wendy Moreau, and Ann Darby. 8 Would those be the little birds that came to see 9 you? 10 A Those were the ER nurses that came to me 11 but referencing -- but if you're referencing back to 12 this one other one? 13 Q Back to Exhibit 16? 14 A Yeah, I've already addressed that. I just 15 don't remember if they were or not. 16 Q So apparently you met with -- or your 17 dates are off, but you met with some little birds on 18 1/9 and then you met with these three women on 1/10. 19 Is that correct? 20 A Yes. That seems to be correct. 21 Q Okay. And the statements you gave, you 22 took in here or that are stated in here, are the 23 ones that you sent, intending that that be part of 24 the investigation that Ms. Gotcher and Ms. Melton 25 were undertaking?</p>
<p style="text-align: right;">130</p> <p>1 A "Yes" to what? 2 Q Yes, you do try to document? 3 A Did I document? I tried. Yes, I tried. 4 (Exhibit 17 marked) 5 Q (BY MS. MILLER) I show you what's been 6 marked Exhibit Number 17 of? 7 A You're getting these long ones again. 8 Okay. Your question? 9 Q Okay. And this is a document you 10 generated? 11 A Yes. 12 Q And e-mailed on January 12th, 2006. 13 Correct? 14 A Assuming that's the stamp, yes. 15 Q After looking at this document, do you 16 recall if this was prepared in -- after the 17 investigation team came to the Estelle Unit or 18 before? 19 A I think this was before but, again, I 20 don't remember. I know one of the documents cited 21 specifically when the team came to the Estelle Unit 22 and I just didn't retain the date. 23 Q Okay. Can you tell by looking at it? Can 24 you tell by looking at it, the way it's written, 25 whether or not it was before or after?</p>	<p style="text-align: right;">132</p> <p>1 A No. My intent was just to document the 2 meeting with the nurses as best I could. 3 Q Okay. And did you ask them to review it 4 for accuracy? 5 A No. I don't think so. 6 (Exhibit 18 marked) 7 Q (BY MS. MILLER) I show you what's been 8 marked as Exhibit Number 18. Oop. I need the one 9 back with the sticker on it. It's from yesterday's. 10 Sorry. It's the same 18. 11 A Okay. Okay. Do you have a question? 12 Q And do you recognize this document? 13 A I don't remember it particularly. It 14 doesn't stand out in my mind but it appears to be an 15 e-mail sent from Ann -- who did send it? Ann Darby 16 sent it to Mary Gotcher and copied it to me. 17 Q And that this is dated January 26th of 18 2006. 19 A Yes. 20 Q Did you document, in all your extensive 21 documentation, efforts that you made to review these 22 with Ms. Fisher, consistent with the chain of 23 command, "these" being the little birds comments 24 that came to visit you in Exhibit Number 16 and 25 those three nurses that came to discuss with you on</p>

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<p>1 January 10th in Exhibit 17? Did you document any 2 way or any manner, that you can recall, your 3 attempts to review those with Ms. Fisher? 4 A Not that I recall. May I ask a question? 5 Q Off the record, you may. 6 A Of course, yes. 7 (Lunch recess from 2:09 to 3:06) 8 (Exhibit 19 marked) 9 Q (BY MS. MILLER) Show you what's been 10 marked as Exhibit 19. Do you recognize that 11 document? 12 A No memory but, yes, I mean, it's obviously 13 to me. No issues there. 14 Q Regarding another meeting back at the 15 Estelle Unit with Ms. Gotcher. Correct? 16 A A meeting. I don't know which one it was. 17 Yes, ma'am. 18 (Exhibit 20 marked) 19 Q (BY MS. MILLER) Show you what's been 20 marked as Exhibit Number 20. And do you recognize 21 that document? 22 A I don't remember it. I mean, it's 23 self-evident. 24 Q Okay. And, in fact, after the 25 investigation that took place by Ms. Gotcher and --</p>	<p>1 Q Okay. And also the staff was given a 2 letter of expectation. 3 A The document that I remember was -- I 4 guess the answer to your question would be yes. I 5 mean, there was -- I think it said, "Ms. Fisher's 6 expectations" or "Expectations of Ms. Fisher and 7 expectations of the staff," and I believe it was 8 like one on top of the other. That's the one -- 9 Q In the same document? 10 A Yes. I believe so. 11 Q And do you -- how was the staff notified 12 do you know? Oh, strike that. That's what this is. 13 Did you attend every meeting or any of the meetings? 14 A I attended one for sure but I don't 15 remember how many there were. Is that in there? 16 Q It indicates three different times. 17 A Oh, okay. I remember one for certain. 18 I'm not sure about the other two. 19 Q And did you participate in those meetings? 20 A I don't recall. Ms. Gotcher did most of 21 the talking. 22 Q Okay. 23 (Exhibit 21 marked) 24 Q (BY MS. MILLER) I'm going to show you 25 what's been marked as Exhibit Number 21.</p>
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<p>1 Ms. Gotcher and Ms. Melton at the Estelle Unit and 2 the subsequent follow-up, there was a meeting with 3 the staff of the Estelle Unit; was there not? 4 A I'm sorry. Can -- could you say that 5 again? 6 Q After the investigation that Ms. Gotcher 7 and Ms. Melton undertook and then there was some -- 8 what? A follow-up meeting after that, or how many 9 times did Ms. Gotcher come before that she met again 10 with all the staff? Do you recall? 11 A I -- I don't. I remember there was a big 12 meeting with the staff. 13 Q Okay. And this would have explained that 14 meeting with the staff? Is that what the purpose of 15 this is? 16 A I'd have to match dates, but presumably 17 so. 18 Q Okay. Did you attend those meetings when 19 the staff -- 20 A I think so, yeah. 21 Q And that -- those are the meetings shown 22 in Exhibit Number 20, the times and dates that 23 Ms. Fisher was given her letter of expectation as a 24 result of the investigation. 25 A I believe so, yes.</p>	<p>1 A Yes. This is a quarterly evaluation. 2 Q Okay. And you had three quarterly 3 evaluations and one annual evaluation? Is that the 4 way it worked? 5 A Not sure. I want to say the quarterlies 6 were -- what's the word? Didn't have to do it 7 but -- 8 Q Optional? 9 A Thank you. Optional. I believe they were 10 optional. 11 Q All right. And you've chosen this 12 particular instance to give Ms. Fisher a quarterly 13 evaluation. 14 A Yes. 15 Q Okay. And on page 69 of Exhibit 16 Number 21, it indicates here that you'd be working 17 with Ms. Fisher over the course of the next two -- 18 few months to increase her awareness in the weak 19 areas and increase her areas of strength, and you 20 had confidence that she could improve these to be a 21 more effective manager. Is that correct? 22 A Which paragraph are you on? 23 Q On the page 69 at the very bottom before 24 the two bullet points. 25 A Um-hmm. Yes. I'm sorry.</p>

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<p>1 Q Okay. And, indeed, how did you work with 2 her over the next few months to improve these areas 3 that she needed to be a more effective manager? 4 A Well, I attempted to have discussions with 5 her about some of these but my recollection is that 6 she didn't feel like she had areas of deficiency. 7 Q Is there anything that is documented that 8 would show or is it just your recollection of how 9 you -- how you tried to work with her? 10 A It's -- I don't believe there's any 11 documentation. Normally we would have a 12 conversation in my office. She'd come to my office 13 or I'd go to hers. Usually she she'd come to mine 14 and we'd chat. 15 Q But you didn't document those 16 conversations? 17 A I don't think so. 18 Q And that semi -- that was a semiannual? 19 Is that it? 20 A Quarterly. 21 Q Okay. Quarterly. 22 MS. FISHER: Can I say something too? 23 MS. MILLER: Sure. 24 (Ms. Fisher confers with Ms. Miller) 25 (Exhibit 22 marked)</p>	<p>1 I was going to continue to keep the RMF working. It 2 was -- I was running out of things to do. I didn't 3 know -- one of the points in here, I said if -- I 4 may have to call upon one of the other directors for 5 support, meaning borrowing staff if people continued 6 to leave, if we got to the point where we were 7 basically facing mission failure. 8 Q It wasn't uncommon for -- strike that. 9 It was -- it did occur in other 10 facilities that staff might be borrowed from time to 11 time. Isn't that correct? 12 A If they were available, yes. 13 Q Well, they weren't available from other 14 facilities? 15 A Some of the other facilities were also 16 short-staffed. 17 Q They were having their own problems; 18 weren't they? 19 A Some were. 20 Q What do you mean here by the statement 21 from -- if you go the third paragraph from the 22 bottom, the last sentence in that, "Given her single 23 mindedness and her apparent drive to make managerial 24 decision from emotion rather than logical and 25 mission related goals, I feel I should be able to</p>
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<p>1 Q (BY MS. MILLER) I'm going to show you 2 what's been marked as Exhibit Number 22. Take a 3 minute and look at that document, if you would, 4 please. And I'm going to take that -- the second 5 page back and make it another exhibit. I'm sorry. 6 The third page. Excuse me. 7 A Um-hmm. 8 (Exhibit 23 marked) 9 MS. MILLER: 23. 10 A Okay. 11 Q (BY MS. MILLER) Okay. Did you prepare 12 this e-mail sent to Sandy Rader and Mary Gotcher? 13 A Yes. 14 Q And dated March 25th, 2006. Is that 15 correct? 16 A That's the date, yes. 17 Q And tell me the purpose of this e-mail. 18 A I guess it was just to express where I -- 19 I felt like we were at the time. I wanted them to 20 be aware of my concerns. 21 Q And where do you -- where did you feel you 22 were at the time? On what issue? 23 A Not any one particular issue. It was the 24 whole situation. I felt like -- I felt like I was 25 kind of in a no-win situation and I didn't know how</p>	<p>1 collect sufficient documentation in a reasonable 2 time and still be able to realistically prevent a 3 catastrophic failure"? What do you mean by 4 "realistically collect sufficient documentation"? 5 A Well, as I alluded to above, I didn't feel 6 like there was a sufficient documentation to support 7 action to relieve her of duties. She didn't feel 8 like she had done anything wrong. I felt like if 9 she continued to be impulsive and make decisions 10 that I didn't think were in the best interest of the 11 unit or the staff or the spirit of the staff, the 12 morale -- the morale, if you will, that that 13 would -- that would manifest itself. 14 Q But so far, up to this point, you've 15 relied on feedback from a handful of malcontented 16 employees. Isn't that correct? 17 A I relied on feedback from employees, yes. 18 Q And that were discontent. 19 A To some degree, yes. 20 Q And do you have any knowledge as to 21 whether or not those employees who were not content, 22 who were malcontent at the time, are still with the 23 agency? 24 A I don't know. I'm sure -- 25 Q Do you have any knowledge as to whether or</p>

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<p>1 not those employees who were not happy with 2 Ms. Fisher made subsequent complaints against their 3 next nurse manager? 4 A I have no knowledge. 5 Q And when you say "able to collect 6 sufficient documentation," do you mean get enough 7 stuff so you could demote her? 8 A To support the demotion. 9 Q So what happened to these expectations and 10 wanting to work with her and move her along in a 11 positive manner? 12 A I think I've already kind of touched on 13 that in the fact that Ms. Fisher was fairly adamant 14 and she didn't see that there was a problem. She 15 felt like the staff was a problem, not her. Now, if 16 I feel like she's having issues and she tells me, 17 "It's not me," that kind of limits what you can do 18 to help. So how do you work with that? I don't 19 know. 20 Q And here's my problem with your answer and 21 maybe you can shed some light on this. You seem to 22 be excellent at recording documentation of all kinds 23 of events in great detail. Wouldn't you agree, 24 based on the quantity that we've looked at here 25 today?</p>	<p>1 felt and still feel to this day that the ultimate 2 responsibility fell to HR because if they didn't 3 agree or they didn't sanction whatever move you're 4 going to make, it didn't happen. My rationale is 5 that if they have the ability to stop it and they 6 have the ability to approve it, without which 7 nothing will go forward, ultimately the 8 responsibility is theirs. And my decision, what I'm 9 referring is that I chose the demotion. I thought 10 that was the most effective means to make an impact. 11 It removed Ms. Fisher from the RMF, hopefully before 12 we had a catastrophic failure, and it was the only 13 course of action that I could foresee at the time. 14 Q And I'm going to represent to you -- 15 because you were unclear with the number of days she 16 had to show improvement, I'm going to represent to 17 you that she was demoted in -- within that time 18 period without being permitted the full amount of 19 time to show improvement. Would you -- I'm not even 20 asking you to agree with that. I'm going to 21 represent to you that that's correct from the 22 documentation that we have. 23 A Okay. 24 Q Where is it -- why would it be that you 25 would cut short her opportunity for improvement once</p>
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<p>1 A I don't think that's an unreasonable 2 statement. 3 Q Okay. Yet, we have no documentation of 4 your conversations with Ms. Fisher for her 5 improvement. Isn't that correct? 6 A Correct. 7 Q And we have no documentation where she has 8 indicated she doesn't think she has anything to 9 learn. Isn't that correct? 10 A Yes. That's correct. 11 Q If you'd look at Exhibit Number 23. 12 A Okay. 13 Q And do you remember seeing this document? 14 A I do. 15 Q And I think in one of your previous 16 statements, either to the EEOC or that multiple-page 17 statement that you wrote, you accepted full 18 responsibility for demoting Ms. Fisher. Isn't that 19 correct? 20 A I -- I accepted full responsibility for 21 demoting Ms. Fisher, that is correct, in that I 22 thought that was a proper -- proper thing to do, 23 given the circumstances. 24 Q And -- given what circumstance? 25 A Well, the circumstances that I feel --</p>	<p>1 you'd given her not even any discipline? You'd 2 given her expectations to going -- with 90 days to 3 improve. So why is it that would you go in less 4 than 90 days, part of which she wasn't even there 5 because she was on Family Medical Leave Act, and 6 choose to demote her? 7 A Because I was concerned if some action 8 weren't taken that the mission of the RMF would, in 9 fact, fail. I was told in late '05, I believe it 10 was, by Tony Williams that failure of the RMF is not 11 acceptable. 12 Q And by "failing," what do you mean? 13 A I mean failing to deliver the level of 14 care that's required to give -- to provide adequate 15 safety and medical care to the patients out there 16 that are pretty sick. 17 Q Okay. Now, we've talked a lot about 18 Ms. Fisher's personality but we've not talked about 19 anything where -- other than one hanging where -- a 20 suicide of an inmate and a bathtub incident where an 21 inmate died in the bathtub, we've not talked about 22 anything where the level of care was affected. 23 Isn't there documentation or wouldn't you want to 24 reference that if that's what you thought was 25 imminent failure coming down the pike?</p>

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<p>1 A It hadn't failed yet, but if sufficient 2 staff continued to leave, it was foreseeable that it 3 would. 4 Q And it's your position that more staff was 5 leaving Estelle Unit than any other unit. 6 A I believe so. 7 Q And so there would be a way to check that. 8 Right? 9 A Presumably so. 10 Q And would it be appropriate to look at 11 sheer numbers of staff or percentage of staff? 12 A I would probably look at what does it take 13 to run the unit at a minimum and where are we at? 14 Are we close to that? Could we suddenly slip below 15 it? By way of example, if the four ER nurses left 16 simultaneously, I would -- it would be a challenge, 17 I think, to cover that. We were also already using 18 agency staff at the time to cover shortages. 19 Q And the four ER nurses, had they made the 20 demand that "You fire my boss or we're leaving"? 21 Had they made that demand to you? 22 A Yes. They had made that demand. 23 Q And, again, this chain of command thing, 24 how did that get communicated to Ms. Fisher in the 25 interim?</p>	<p>1 and it got better and then you move on to your next 2 crisis or whatever your next most-pressing issue is. 3 Q And are you suggesting that somehow that 4 was Ms. Fisher's mismanagement that caused that 5 problem? 6 A No. Not necessarily. 7 Q And what is Elite? 8 A It's a staffing agency? 9 Q And does Bryan Allison work for Elite or 10 he works for Supplemental? 11 A I don't remember. 12 Q Okay. There was at one time some 13 allegation about Ms. Fisher and her relationship 14 with Bryan Allison. Do you recall that? 15 A It wasn't a relationship particularly with 16 Bryan Allison. I was told that the nurses didn't 17 want to work there because they were unhappy with 18 the way Ms. Fisher treated him, and I called Bryan 19 Allison and asked him if that was, in fact, the 20 case. I had a telephone conversation with him. He 21 said, yes, that was true. And later on -- it may be 22 the same day -- Ms. Fisher was in my office and I 23 talked to her about that and basically she said she 24 didn't believe me and said, "Can we get Bryan 25 Allison on the phone?" I said, "Yes, we can." We</p>
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<p>1 A I don't know that it did. That was just 2 before Ms. Gotcher came. The decision by 3 Ms. Gotcher to come had already been made and so I 4 chose at that point in time to just wait and see, 5 let them voice their complaints. 6 Q When was the decision to demote Ms. Fisher 7 made? 8 A I honestly couldn't pinpoint it. 9 Q How long had UTMB been experiencing severe 10 staffing shortages in the -- in the TDC arena? 11 A I don't consider most of the staffing 12 shortages severe but we did experience staffing 13 shortages pretty much the whole time I was there. 14 Q Okay. It was an ongoing problem. 15 A It was. 16 Q It was a priority for UTMB to address that 17 issue. 18 A It was. 19 Q Across the board, not specific to 20 Ms. Fisher. 21 A Across the board in general. There was an 22 example by way of the Ferguson Unit and I forget 23 exactly what we did. I think we offered some sort 24 of bonus pay for a while to get that staffed. Then 25 they got an extra percentage. So we staffed that up</p>	<p>1 proceeded to do that and he repeated for her what he 2 had said to me, that the nurses didn't like the way 3 she was treating him. 4 MS. MILLER: Move to strike as 5 nonresponsive. 6 Q (BY MS. MILLER) There was an issue at 7 some point or an alleged inability of Bryan Allison 8 and Ms. Fisher to work together. Is that correct? 9 A I don't recall that. 10 Q Okay. Did Ms. Fisher ever discuss with 11 you her concerns about the agency staffing that were 12 provided? 13 A She con-- expressed to me concerns when we 14 were having discussion about getting the staffing, 15 yes. 16 Q Thank you. She was concerned about the 17 competency level of the nurses that were being 18 provided by the staffing agencies; wasn't she? 19 A No. My recollection was she was -- 20 Q Was -- "yes" or "no"? 21 A No. The answer is no. 22 Q Okay. 23 A I don't -- I don't recall that. 24 (Exhibit 24 marked) 25 Q (BY MS. MILLER) I show you what's been</p>

<p style="text-align: right;">149</p> <p>1 marked as 24, exhibit number. 2 MR. LIVELY: What number? That? 3 MS. MILLER: 24. 4 A Okay. 5 Q (BY MS. MILLER) Do you recognize this 6 document? 7 A Yes. I remember. 8 Q Okay. And is this the instance you were 9 describing with Bryan Allison? 10 A This was part of that conversation that 11 took place, I believe, over a day or two. 12 Q Okay. And do you know -- you indicate "We 13 will need to revisit the staffing upon your return." 14 Do you know where she was going? 15 A Let's see. What's the date? I think that 16 was when she was about to go out on leave, the -- 17 was it the FMLA, perhaps? 18 Q Okay. But in this particular document, 19 you're recapping incidents from March 10 and 20 March 22nd but, yet, you didn't document this until 21 April. Would you agree that that's correct? 22 A It appears to be correct. 23 Q Is this part of the collecting enough 24 documentation that you referred to in the other 25 letter to Ms. Gotcher?</p>	<p style="text-align: right;">151</p> <p>1 A Excuse me. I'm looking right now. 2 Q Went back to March issues. 3 A Okay. Sorry. Yes. 4 Q And on page 70, you went back to February 5 issues. How much of what you demoted her for was 6 based on incidents that occurred subsequent to her 7 letter of instruction? 8 A I couldn't quantify that. 9 Q Can you give me an idea? 10 MR. LIVELY: Letter of instruction 11 or -- 12 MS. MILLER: Expectations. 13 MR. LIVELY: Expectations. 14 MS. MILLER: Letter of expectations. 15 Thank you. 16 MR. LIVELY: I couldn't remember, 17 either. 18 MS. MILLER: Yeah. Different 19 company, same concept. 20 A If you'll give me a moment to review it, 21 I'll see if I can quantify that for you. Okay. 22 Now, I'm sorry. Could you repeat your question 23 about -- 24 Q (BY MS. MILLER) How much of the 25 information upon which you relied in supporting your</p>
<p style="text-align: right;">150</p> <p>1 A Yes. I think that's a fair assessment. 2 (Exhibit 25 marked) 3 Q (BY MS. MILLER) 25, is this the letter of 4 instruct -- or letter of intent that we've been 5 discussing? 6 A Yes. 7 Q And at this point, you felt like you had 8 enough documentation that was -- had occurred -- I 9 mean, how far back did you go in collecting 10 documentation to get to this demotion? 11 A I don't recall. I did -- I do recall that 12 we went back and looked at -- were looking for 13 patterns at previous units which I felt like existed 14 and continued to manifest themselves unabated pretty 15 much at the RMF. 16 Q Well, at least you went back to August of 17 2005, almost -- a little less than a year but you 18 went back at least a year, went back to January 19 issues. Correct? 20 A Can you please say the page? 21 Q Page 69 of Exhibit Number 25. 22 A Top of the page? 23 Q Very first sentence. 24 A Okay. 25 Q Correct? You went back to --</p>	<p style="text-align: right;">152</p> <p>1 documentation had occurred subsequent to her letter 2 of expectation? 3 A Can I review the letter of expectation 4 or -- yeah, the date? 5 MS. FISHER: Ms. Gotcher? Are you 6 talking about when Ms. Gotcher came and had the 7 meeting? 8 THE WITNESS: That was in February, I 9 think. 10 A There appears to me about 50 percent or 11 more. 12 Q (BY MS. MILLER) Can you identify those 13 instance -- those 50 percent or more that you think 14 occurred subsequent to her letter of expectations? 15 A Page 70, second paragraph, March 13th, 16 2006. Received -- "your supervisor presented your 17 semi-annual evaluation, you objected to some parts 18 of the evaluation. This document was given with 19 instructions to closely review and offer alternative 20 wording or constructive comments so that we could 21 negotiate what you felt was fair. Ten days later 22 you still had not returned the evaluation and your 23 supervisor had to request it again." "In February 24 2006, your supervisor requested that you meet with 25 him informally two to three times per week in order</p>

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<p>1 that he may keep abreast of problems/issues," so 2 forth. "As of this date, you have failed to adhere 3 to your supervisor's request." So that was 4 approximately two months. 5 Q Okay. So she didn't return the evaluation 6 to which she objected. Right? That occurred after 7 the letter of instruction -- letter of expectation. 8 A Again, without seeing the date on that, 9 I'm just going by the fact it was in March. 10 Q Okay. 11 A So perhaps it would be close. 12 Q Give me another example that composes the 13 50 percent that you suggest-- or represent occurred 14 subsequent to her letter of expectations. 15 A March the 10th, 2006, we talked about her 16 meeting with both managers weekly and keeping them 17 abreast of the actions. That didn't happen, 18 apparently. 19 Q Okay. Could you just tell me what page it 20 is so that I can mark that? 21 A Oh, I'm sorry. Page 69, bottom paragraph. 22 May I -- is it permissible to read? 23 Q Sure. You're -- this is not an exercise 24 in -- 25 MR. LIVELY: Closed-book test?</p>	<p>1 contact -- or find alternate agencies or backups for 2 agency nurses. The other one was to provide an 3 alternate contact for Bryan Allison's agency. Let's 4 see here. In March of -- 5 Q And she did not do that. 6 A No. 7 Q Okay. 8 A I don't think she ever did the follow-up 9 about the alternate agencies because I called the 10 agencies and asked if she'd called and inquired and 11 they said she did but she didn't request nurses. 12 And then Supplemental, I had to request it several 13 times before she finally gave me an alternate 14 contact person, and when I contacted the agency, 15 they said that she had not provided that to them. 16 Q Okay. And, again, as good at documenting 17 as you are, did you document any of those things, in 18 conversations with the agency and follow-up, that 19 sort of thing? 20 A They're documented right here. 21 Q And it's your testimony that those 22 document what you just testified to. 23 A I believe it to be, yes. 24 Q Okay. All right. I'm still listening. 25 A That is all I can pinpoint at this time.</p>
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<p>1 MS. MILLER: No, it's not. It's not 2 a closed book. Right. 3 A In March 22nd, she was directed to provide 4 an alternate contact for Bryan Allison, whichever 5 agency that was. 6 Q (BY MS. MILLER) Tell me what page you're 7 on so I can follow. 8 A I'm sorry. Got to find that myself. 9 MR. LIVELY: Oh, I see. 10 A Well, I saw it and then I looked over here 11 and now I've lost my reference point. I can't 12 recall the date on that. I think it was in March. 13 She was directed to contact another agency to secure 14 temporary nursing staff in the event the second 15 agency was unable to provide nurses. 16 Q (BY MS. MILLER) That's page 69 of Exhibit 17 Number 25? 18 A Yes, ma'am. 19 Q Okay. I'm finding that. 20 A I'm sorry. Just keep reminding me just to 21 cite. Okay. During that same time period, in March 22 '06, she was instructed to -- well, I think that's 23 what I was just talking about. Oh, no. There's two 24 different instances. They're both in about the same 25 period, time period, it appears, that -- to</p>	<p>1 Q That occurred subsequent to the letter of 2 expectations. 3 A I believe so, yes. 4 Q Okay. Thank you. And, again, this was 5 your decision to initially demote her to the Nurse 6 Clinician III? 7 A No. 8 Q Okay. 9 A My -- my signature's on the paper and I 10 don't -- I don't know why that is unless we -- I 11 signed that when I was talking to Ms. Melton, which 12 may very well be the case, and then subsequently 13 called back and said, "This -- this doesn't seem 14 right to me." 15 Q Okay. Well, starts out, "This letter is 16 to notify you that I intend to request your demotion 17 to Nurse Clinician." 18 A Right. Right. 19 Q But you didn't request that? 20 A No. I had -- 21 Q Who came up with the idea? 22 A Ms. Melton. 23 (Exhibit 26 marked) 24 Q (BY MS. MILLER) And you understand that 25 she appealed the demotion, the intent to demote her.</p>

<p style="text-align: right;">157</p> <p>1 A Yes. I believe she did.</p> <p>2 Q And, in fact, by then, she'd filed a</p> <p>3 couple grievances. Correct?</p> <p>4 A I'm not sure of the time line. I've heard</p> <p>5 she filed some grievances, yes.</p> <p>6 Q Did you get involved in responding to the</p> <p>7 grievances?</p> <p>8 A I don't recall. It doesn't stick out in</p> <p>9 my mind. I don't remember.</p> <p>10 Q And how about responding to the appeals?</p> <p>11 A I also don't recall.</p> <p>12 Q I show you what's marked Exhibit</p> <p>13 Number 26.</p> <p>14 A Okay.</p> <p>15 Q Did you write this letter?</p> <p>16 A Yes.</p> <p>17 Q Okay. And in this letter, you've</p> <p>18 indicated that she's -- you've reviewed her response</p> <p>19 to your intention to demote and you found nothing</p> <p>20 compelling. Is that correct?</p> <p>21 A Now, is this -- I'm unclear if this is to</p> <p>22 be demoted to -- read this a second.</p> <p>23 Q Read the second paragraph. I think --</p> <p>24 A I'm reading it right now, yeah. Okay.</p> <p>25 Q And you found nothing compelling in her</p>	<p style="text-align: right;">159</p> <p>1 Q -- negative employment action prior to</p> <p>2 that time.</p> <p>3 A Yes. I agree.</p> <p>4 Q Now, you are aware that at some point, EEO</p> <p>5 out of Galveston UTMB undertook an investigation.</p> <p>6 A Yes.</p> <p>7 Q And with whom -- without telling me</p> <p>8 what -- well, you can tell me. With whom did you</p> <p>9 speak or did you speak to anyone during that</p> <p>10 investigation?</p> <p>11 A I don't recall having a conversation with</p> <p>12 anyone.</p> <p>13 Q Did you work with Melvin Williams at all</p> <p>14 in the internal investigation completed by UTMB?</p> <p>15 A No. I believe Mr. Williams met me briefly</p> <p>16 in a conference room and I'm not sure if he was</p> <p>17 there for that or something else, but we didn't have</p> <p>18 any face-to-face discussion about any of this. This</p> <p>19 was all conducted via --</p> <p>20 Q Written communication.</p> <p>21 A Yes.</p> <p>22 Q And we have an example. Earlier --</p> <p>23 A Yes.</p> <p>24 Q -- Exhibit Number 1, that was your written</p> <p>25 communication with him.</p>
<p style="text-align: right;">158</p> <p>1 response. Is that correct?</p> <p>2 A Yes. There was nothing that changed my</p> <p>3 mind. The decision regarding the nurse manager</p> <p>4 versus the Nurse Clinician III had already been</p> <p>5 discussed and rehashed with HR prior to this. There</p> <p>6 was nothing in her -- her appeal that I recall that</p> <p>7 triggered me to make this decision. I was already</p> <p>8 uncomfortable with that to begin with.</p> <p>9 Q So as a result of the demotion, she was</p> <p>10 demoted to an assistant nurse manager and she was</p> <p>11 sent back as assistant nurse manager, which we</p> <p>12 talked about this morning, to the Wynne Unit.</p> <p>13 Correct?</p> <p>14 A Correct.</p> <p>15 Q With a decrease in pay.</p> <p>16 A Correct.</p> <p>17 Q And essentially a disciplinary on her.</p> <p>18 A Correct.</p> <p>19 Q And no progressive discipline prior to</p> <p>20 that time.</p> <p>21 A Correct. If I understand the question.</p> <p>22 Q Well, by that, I mean she didn't have any</p> <p>23 write-ups. She didn't have any discipline. Didn't</p> <p>24 have any --</p> <p>25 A Right.</p>	<p style="text-align: right;">160</p> <p>1 A Yes.</p> <p>2 Q Did you have any additional communication</p> <p>3 with Mr. Williams concerning Ms. Fisher's case?</p> <p>4 A There were -- we played -- pardon me for a</p> <p>5 second -- telephone tag. I called him and left a</p> <p>6 message on his answering machine, asking him to call</p> <p>7 me back. I expressed concern that I felt like he --</p> <p>8 from his -- I don't remember what triggered me to</p> <p>9 say this, but I felt like I had done the right thing</p> <p>10 and, yet, somehow I still felt like I had done</p> <p>11 something wrong vis-a-vis just the pressure of the</p> <p>12 investigation. He called back and left me a</p> <p>13 telephone message and said, "I don't feel like</p> <p>14 you've done anything wrong." And then that was</p> <p>15 really about it.</p> <p>16 MS. MILLER: Move to strike as</p> <p>17 nonresponsive.</p> <p>18 Q (BY MS. MILLER) Did you have any</p> <p>19 additional communication with Mr. Williams?</p> <p>20 A Not that I recall.</p> <p>21 Q Did you have a telephone conversation with</p> <p>22 him?</p> <p>23 A Not that I recall.</p> <p>24 Q Okay. Other than the communication,</p> <p>25 Exhibit Number 1.</p>

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<p>1 A That's all I remember.</p> <p>2 Q Okay. Okay. We're going back in time a</p> <p>3 little bit -- or forward in time, I guess.</p> <p>4 (Exhibit 27 marked)</p> <p>5 Q (BY MS. MILLER) Show you what's marked as</p> <p>6 Exhibit Number 27.</p> <p>7 MS. MILLER: Sorry.</p> <p>8 MR. LIVELY: Oh.</p> <p>9 MS. MILLER: Don't mean to throw it</p> <p>10 at you there.</p> <p>11 A Oh. So Ms. Warren took over. I couldn't</p> <p>12 remember who took over. Okay.</p> <p>13 Q (BY MS. MILLER) Okay. This evidently is</p> <p>14 an e-mail from you sent August 17th, 2006, to</p> <p>15 Jacklyn Fisher and she was an assistant nurse</p> <p>16 manager at the Wynne Unit at that point. Right?</p> <p>17 A Yes. I believe so.</p> <p>18 Q Jamie Williams, what was -- was it a she?</p> <p>19 A Yes.</p> <p>20 Q What was Jamie Williams' title at that</p> <p>21 point?</p> <p>22 A She was some sort of administrator,</p> <p>23 practice manager, maybe.</p> <p>24 Q And how about Monique Rodriguez?</p> <p>25 A Her assistant, if I remember.</p>	<p>1 And what was the date that you left</p> <p>2 UTMB?</p> <p>3 A I'm not sure. It was in, I think,</p> <p>4 October, October '06 sometime.</p> <p>5 Q Was there a time and did you learn of</p> <p>6 Ms. Fisher's EEOC charge with the federal agency,</p> <p>7 the EEOC?</p> <p>8 A There was a time, yes.</p> <p>9 Q And how was that communicated to you?</p> <p>10 A I don't remember.</p> <p>11 Q But would you --</p> <p>12 A Probably -- probably from HR.</p> <p>13 Q And you left what date?</p> <p>14 A October of '06 is all I recall.</p> <p>15 Q Okay.</p> <p>16 A Month of October.</p> <p>17 Q And as a result of that charge of</p> <p>18 discrimination, was it shown to you?</p> <p>19 A Not that I remember.</p> <p>20 Q And who from HR discussed that with you?</p> <p>21 A I'm not sure. Probably would have been</p> <p>22 Sandy Rader. She was our local representative.</p> <p>23 Q Did anyone -- without telling me what they</p> <p>24 said, did anybody from the legal department of UTMB</p> <p>25 discuss that with you?</p>
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<p>1 Q And you've indicated at this point when</p> <p>2 Ms. Roddy, the nurse manager from Wynne is no longer</p> <p>3 there, that Jackie is going to report directly to</p> <p>4 Carol Warren. Is that correct?</p> <p>5 A That's my understanding, yes.</p> <p>6 Q As well as Ms. Williams and Ms. Rodriguez.</p> <p>7 A No, no. She didn't report to Ms. Williams</p> <p>8 or Ms. Rodriguez, or at least not in the nursing</p> <p>9 chain of command. She was -- she worked with them</p> <p>10 but her chain of command as far as reporting would</p> <p>11 have been to Ms. Warren and up to Ms. Gotcher.</p> <p>12 Q Okay. So was Ms. Williams -- were</p> <p>13 Ms. Williams and Ms. Rodriguez involved in the Wynne</p> <p>14 Unit?</p> <p>15 A Yes.</p> <p>16 Q Gotcha. And do you recall what they</p> <p>17 worked -- what area they worked in?</p> <p>18 A Well, they worked in medical but they</p> <p>19 were -- how would you say it? They were in charge</p> <p>20 of more like clerical staff, support staff. It</p> <p>21 isn't -- it wasn't related to nursing.</p> <p>22 Q Okay. And who was in charge of geriatric</p> <p>23 at that point? Do you recall?</p> <p>24 A Geriatric was over at the RM.</p> <p>25 Q Oh, wait, wait. Strike that.</p>	<p>1 A I know you're tired of hearing this, but</p> <p>2 I'm sorry. I don't remember.</p> <p>3 Q That's fine. If you don't, you don't.</p> <p>4 What was your understanding of the allegations made</p> <p>5 by Ms. Fisher?</p> <p>6 A Discrimination of a racial nature, I</p> <p>7 believe.</p> <p>8 Q And anything else that you can recall?</p> <p>9 A No.</p> <p>10 (Exhibit 28 marked)</p> <p>11 Q (BY MS. MILLER) I'm going to show you</p> <p>12 what's marked as Exhibit Number 28. Do you</p> <p>13 recognize this document? Take a minute. It's --</p> <p>14 A It's a big one; isn't it?</p> <p>15 Q Well, it's not that big, actually. It's</p> <p>16 just got some attachments with big print, you'll be</p> <p>17 glad to know.</p> <p>18 A I like big print, especially the older I</p> <p>19 get. Orson Wells.</p> <p>20 Q Sir?</p> <p>21 A Orson Wells. I'm just a little surprised.</p> <p>22 It took me aback. You don't see that name very</p> <p>23 often. I'm sorry. Page 436.</p> <p>24 Q Is that a real person?</p> <p>25 A It appears. Yeah, U -- U --</p>

<p style="text-align: right;">165</p> <p>1 Q 1980?</p> <p>2 A UT --</p> <p>3 Q Oh, that's George Orwell.</p> <p>4 A UTMB organizational development, yes. Or</p> <p>5 outcomes. I'm not sure. Excuse me. Do you need me</p> <p>6 to review this in detail for anything in particular?</p> <p>7 Q No. Was this document shared with you as</p> <p>8 an upper level management?</p> <p>9 A It may have been. I saw hundreds and</p> <p>10 hundreds of documents. It's not ringing -- doesn't</p> <p>11 bring anything to the surface as --</p> <p>12 Q But you would agree that it represents a</p> <p>13 task force report of recommendations regarding UTMB</p> <p>14 and critical managed care. Correct?</p> <p>15 A Well, I will have to read it closely.</p> <p>16 That's probably --</p> <p>17 Q Okay. Well, take a look at it.</p> <p>18 A Okay. Interesting. Quite a list; isn't</p> <p>19 it?</p> <p>20 Q I could tell you how many but I'm not sure</p> <p>21 my Roman numerals go up that high.</p> <p>22 A I know mine don't. Charities? Okay.</p> <p>23 What's your question?</p> <p>24 Q Okay. Given that this is identified as an</p> <p>25 executive summary from -- regarding UTMB critical</p>	<p style="text-align: right;">167</p> <p>1 A I suppose that's fair.</p> <p>2 Q Would it go beyond anything that was</p> <p>3 related to TDCJ?</p> <p>4 A Well, I'm just not sure it includes TDCJ</p> <p>5 per se. It keeps referencing UTMB. TDCJ would be</p> <p>6 involved, I guess, by virtue of the fact that that's</p> <p>7 just where we were.</p> <p>8 Q Okay. All right. The UTMB function that</p> <p>9 relates to TDCJ. Is that more accurate?</p> <p>10 A Yeah. I think that's fair.</p> <p>11 Q Okay. And recognizing that TDCJ is a</p> <p>12 separate agency.</p> <p>13 A Yes.</p> <p>14 Q Okay. So if you look -- and this was</p> <p>15 evidently based -- according to Mr. Raimer's letter</p> <p>16 dated August 15th, 2006, evidently based on a focus</p> <p>17 group from employees across the board --</p> <p>18 A Yes.</p> <p>19 Q -- of correctional managed care.</p> <p>20 A It's a mouthful; isn't it?</p> <p>21 Q Well, I'm just --</p> <p>22 A CMC.</p> <p>23 Q -- looking to see if I said that right.</p> <p>24 MS. BERNSTEIN: It's Dr. Raimer, not</p> <p>25 Mr.</p>
<p style="text-align: right;">166</p> <p>1 managed care, help me understand how broad this is</p> <p>2 in terms of UTMB. Critical managed care</p> <p>3 encompasses --</p> <p>4 MS. BERNSTEIN: Correctional managed</p> <p>5 care.</p> <p>6 MS. MILLER: Correctional managed</p> <p>7 care. Thank you.</p> <p>8 Q (BY MS. MILLER) Correctional managed care</p> <p>9 encompasses the entire TDC relationship? Is that</p> <p>10 correct? Or --</p> <p>11 A No. No.</p> <p>12 Q Or is it broader than that?</p> <p>13 A Well, just for specificity, approximately</p> <p>14 80 percent of the state, the TDC system, healthcare</p> <p>15 is provided by UTMB. The other 20 percent, give or</p> <p>16 take, the Panhandle and north, West Texas, is</p> <p>17 provided by Texas Tech University or some equivalent</p> <p>18 of Texas Tech. So --</p> <p>19 Q So the Texas Tech would be included in</p> <p>20 this also?</p> <p>21 A No.</p> <p>22 Q Okay. This would be unique to --</p> <p>23 A UTMB facilities. UTM --</p> <p>24 Q Okay. UTMB and TDC but not Texas Tech and</p> <p>25 TDC.</p>	<p style="text-align: right;">168</p> <p>1 MS. MILLER: Okay. Dr. Raimer.</p> <p>2 Thank you.</p> <p>3 MS. BERNSTEIN: Sorry.</p> <p>4 MS. MILLER: No. I should have done</p> <p>5 that.</p> <p>6 Q (BY MS. MILLER) And wouldn't you agree</p> <p>7 that you had some of the same problems in the</p> <p>8 Estelle Unit of excessive work load that is rated as</p> <p>9 the highest -- on page 438, excessive work load was</p> <p>10 one of the problems that Ms. Fisher had in her area;</p> <p>11 wasn't it?</p> <p>12 A Yes.</p> <p>13 Q And that seems to be a critical issue</p> <p>14 across the board for CMC.</p> <p>15 A I agree.</p> <p>16 Q Short staffing was one of the problems</p> <p>17 that was attributed to her demotion.</p> <p>18 A Yes.</p> <p>19 Q And that seems to be a critical issue</p> <p>20 across CMC. Wouldn't you agree?</p> <p>21 A Yes.</p> <p>22 Q Processes and protocols seemed to be a</p> <p>23 problem agencywide.</p> <p>24 A That's their finding. I don't know that I</p> <p>25 would necessarily concur, but fair enough.</p>

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<p>1 Q Okay. But at least in report by</p> <p>2 Dr. Raimer or --</p> <p>3 A Sure. Yeah. Yeah.</p> <p>4 Q It would appear that they've recognized</p> <p>5 that as such.</p> <p>6 A I can see.</p> <p>7 Q And wasn't that one of the things that</p> <p>8 Ms. Fisher was demoted for was her processes and</p> <p>9 protocols for the emergency ward or emergency room?</p> <p>10 A Not that I recall. She specifically went</p> <p>11 in and moved some stuff around without conveying</p> <p>12 that to -- pardon me, appropriately to other</p> <p>13 emergency room staff, and so when they came in there</p> <p>14 and went to looking for some of this, they couldn't</p> <p>15 find it. But I don't -- I'm -- right off the bat, I</p> <p>16 don't recall that being listed as specifically --</p> <p>17 Q That was not a process?</p> <p>18 A I'm not sure how to answer that. It was</p> <p>19 something she just did. I mean, I'm not a -- I</p> <p>20 can't recall a process where we systematically went</p> <p>21 in and, you know, moved things around or whatever.</p> <p>22 I'm not sure I understand really how to answer your</p> <p>23 question.</p> <p>24 Q Okay. On page 438 of Exhibit Number 27,</p> <p>25 you'd have to agree that lack of confidence in</p>	<p>1 interrogatories.</p> <p>2 MS. BERNSTEIN: Yes.</p> <p>3 MS. MILLER: I think there were</p> <p>4 three, yes.</p> <p>5 MS. BERNSTEIN: Yes.</p> <p>6 MS. MILLER: Yes. And I've agreed to</p> <p>7 give them an extension. And you can have more than</p> <p>8 ten days if you need it. I mean, it's not like we</p> <p>9 have a trial schedule until January.</p> <p>10 MR. LIVELY: January or February.</p> <p>11 MS. MILLER: So there's no sense to</p> <p>12 make yourself crazy over it. I promise you, I'm not</p> <p>13 going to look at it for another two weeks or maybe</p> <p>14 30 days.</p> <p>15 MS. BERNSTEIN: Let's say ten, and if</p> <p>16 it looks like we're going to get jammed up --</p> <p>17 MS. MILLER: You can call me. That's</p> <p>18 fine.</p> <p>19 MS. BERNSTEIN: Thank you very much.</p> <p>20 MS. MILLER: You're welcome.</p> <p>21 MR. LIVELY: Thank you.</p> <p>22 MS. BERNSTEIN: I appreciate that.</p> <p>23 (Recess from 4:05 to 4:13)</p> <p>24 MS. MILLER: We're done. Pass the</p> <p>25 witness.</p>
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<p>1 supervisors and management is certainly an issue</p> <p>2 that's rated ed very highly as a concern for the CMC</p> <p>3 report of August of 2006.</p> <p>4 A I agree.</p> <p>5 Q And that was an issue that Ms. Fisher was</p> <p>6 demoted for. Is that correct?</p> <p>7 A Partially.</p> <p>8 Q Communication?</p> <p>9 A Yes.</p> <p>10 Q That was an issue that was a concern?</p> <p>11 A Yes.</p> <p>12 Q And that's certainly a concern agencywide.</p> <p>13 A Appears to be.</p> <p>14 Q Train -- professionalism, that was</p> <p>15 identified by you as a concern and evidently a</p> <p>16 concern agencywide.</p> <p>17 A It appears to be.</p> <p>18 MS. MILLER: Okay. Let's take a</p> <p>19 little break.</p> <p>20 MR. LIVELY: Okay.</p> <p>21 (Recess from 4:03 to 4:04)</p> <p>22 MR. LIVELY: The parties have agreed</p> <p>23 to give the defendants a ten-day extension to answer</p> <p>24 the recent discovery sent to us. I think there was</p> <p>25 some admissions and request for production and</p>	<p>1 MR. LIVELY: Oh, we'll reserve our</p> <p>2 questions till time of trial. Thank you,</p> <p>3 Mr. Watson.</p> <p>4 THE WITNESS: Thank you.</p> <p>5 (Proceedings concluded at 4:13 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<div style="text-align: right;">173</div> <div style="text-align: center;">CHANGES AND SIGNATURE</div> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 5%; text-align: left;">PAGE</th> <th style="width: 5%; text-align: left;">LINE</th> <th style="width: 15%; text-align: left;">CHANGE</th> <th style="width: 75%; text-align: left;">REASON</th> </tr> <tr><td>1</td><td></td><td></td><td></td></tr> <tr><td>2</td><td></td><td></td><td></td></tr> <tr><td>3</td><td></td><td></td><td></td></tr> <tr><td>4</td><td></td><td></td><td></td></tr> <tr><td>5</td><td></td><td></td><td></td></tr> <tr><td>6</td><td></td><td></td><td></td></tr> <tr><td>7</td><td></td><td></td><td></td></tr> <tr><td>8</td><td></td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td><td></td></tr> </table> <p>I, DAVID W. WATSON, have read the foregoing deposition and hereby affix my signature that same</p>	PAGE	LINE	CHANGE	REASON	1				2				3				4				5				6				7				8				9				10				11				12				13				14				15				16				17				18				19				20				21				22				23				24				25				<div style="text-align: right;">175</div> <div style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION</div> <p>JACKIE FISHER,) Plaintiff,) VS.) C.A. NO. 4:08-cv-01273 UNIVERSITY OF TEXAS MEDICAL) BRANCH and DAVID WATSON,) Defendants.)</p> <div style="text-align: center;">REPORTER'S CERTIFICATION DEPOSITION OF DAVID W. WATSON AUGUST 28, 2009</div> <p>I, Lorri Lucas, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following: That the witness, DAVID W. WATSON, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness; That the deposition transcript was submitted on _____ to the witness or to the attorney for the witness for examination, signature and return to me by _____; That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:</p>
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<div style="text-align: right;">174</div> <p>is true and correct, except as noted herein.</p> <p style="text-align: center;">_____ DAVID W. WATSON</p> <p>THE STATE OF _____) COUNTY OF _____)</p> <p>Before me, _____, on this day personally appeared DAVID W. WATSON, known to me (or proved to me under oath or through _____)(description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.</p> <p>Given under my hand and seal of office this _____ day of _____, _____.</p> <p style="text-align: center;">_____ NOTARY PUBLIC IN AND FOR THE STATE OF _____</p>	<div style="text-align: right;">176</div> <p>Ms. Jo Miller, Attorney for Plaintiff Mr. Sam Lively and Ms. Cari G. Bernstein, Attorneys for Defendants</p> <p>That a copy of this certificate was served on all parties shown herein. I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action. Certified to by me this 18th day of September, 2009.</p> <p style="text-align: right;">_____ LORRI LUCAS, RMR, Texas CSR 5317 Expiration Date: 12/31/09 Bayou City Reporting, Inc. Firm Registration No. 295 1135 East 11th Street Houston, Texas 77009 (713) 861-8589</p>																																																																																																								

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